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October 7, 2016

Richard Cordray, Director
c/o Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

RE: Proposal Related to Payday, Vehicle Title and Certain High-Cost Installment Loans
Docket No. CFPB-2016-0025
RIN 3170–AA40

Dear Director Cordray:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I am writing to you regarding the Consumer Financial Protection Bureau's (CFPB) recently proposed rule for "Payday, Vehicle Title, and Certain High Cost Installment Loans." 81 FR 47863 (July 22, 2016). While NAFCU appreciates the Bureau's decision to identify credit unions as model lenders, particularly with respect to the Payday Alternative Loan (PAL loan) exemption, we are deeply concerned with the Bureau's sweeping and complex new requirements. NAFCU has identified provisions in the rule that encroach upon the authority of the National Credit Union Administration (NCUA) and could impair prudential regulations related to safety and soundness.

For many small credit unions, NAFCU believes this proposal would necessitate an end for most, if not all, covered loan products. For larger credit unions, the restrictions would impose substantial barriers to access to credit, which might lead members to rely upon predatory online lenders in times of emergency. Given the uncertainty that permeates ability-to-repay (ATR) requirements, and the substantial costs associated with complying with record retention and reporting rules, NAFCU strongly recommends that the Bureau exercise its exemption authority granted by Congress to preserve the ability of credit unions to accommodate members with consumer-friendly, short-term, small dollar loans.

Overview

NAFCU and our members ask that the CFPB recognize that the proposed rule contains numerous provisions that are unlawful, detrimental to the safety and soundness of credit unions, harmful to consumer access to credit, and unworkable in *any* form. Accordingly, NAFCU asks that the CFPB withdraw its rule and consult with NCUA regarding any future plans to regulate short-term, small dollar lending at credit unions. NAFCU would also like to highlight some of the core problems associated with the current proposal:

1. The CFPB's unlawful attempt to override *the Federal Credit Union Act* (FCU Act) and restrict credit unions' right of offset.
2. The CFPB's improper attempt to displace NCUA regulations regarding the applicable interest rate ceiling for credit union loans.
3. The negative impact the proposal will have on the availability of short-term, small dollar loans at credit unions who do not generally offer these products to earn a profit.
4. The CFPB's shocking lack of credit union specific data to support an unprecedented expansion of its UDAAP authority.

An exemption for credit unions from the entirety of the rule would represent the only true solution for mitigating the overwhelming burden imposed by a novel and complex compliance regime. Although this letter offers various alternative suggestions for specific aspects of the proposal, these are not meant to distract from NAFCU's underlying message. Credit unions cannot reasonably accommodate the needs of financially distressed members when the cost and time associated with originating just one short-term, small-dollar loan skyrockets to accommodate the CFPB's myriad, and often arbitrary, underwriting requirements.

General Comments

NAFCU supports the CFPB's efforts to protect consumers from predatory lending practices and welcomes new ideas for helping consumers escape harmful cycles of debt. NAFCU understands that the CFPB is attempting to cast a wide net with its proposed rule in order to reach unscrupulous actors operating on the fringe of regulatory purview. However, a host of novel and complex underwriting rules are not appropriate for credit unions or their members, particularly those who reside in low-income communities. For Community Development Financial Institutions (CDFIs), a growing number of which are credit unions, providing access to credit and emergency loans for members in financially distressed communities remains a challenge.

Credit unions are unique in the financial services industry and are different than any other type of lender. *The Federal Credit Union Act* (FCU Act) defines a "federal credit union" (FCU) as a cooperative association organized "for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes."[1] Since the Great Depression, the credit union industry has defined itself as "not for profit, not for charity, but for service," and that shared philosophy has endured to this day. As member-owned not-for-profit cooperatives, credit unions consistently strive to deliver products and services designed to help each member achieve their individual financial needs and goals.

[1] 12 U.S.C. 1752(1) (2006).

Beyond just PAL loans, credit unions of all charter types offer a substantial variety of products, such as signature loans, in order to provide members with as many personal finance options as possible to meet the their needs. NAFCU and its members are concerned that consumers accustomed to the flexibility and straightforward application process for these products will perceive new verification and ATR requirements as cumbersome, potentially embarrassing and less accessible. To the extent that borrowers engage in what the Bureau has identified as "tunneling" behavior—that is, focusing on a quick solution to the problem at hand—a substantial risk arises when a consumer chooses to forgo the gauntlet of an extensive ATR inquiry and instead seek a loan with an online or unlicensed payday lender. In some cases, consumers may even turn to offshore payday lenders that are not accountable to any regulator.

NAFCU believes that consumers would be better served without such an extensive, unreasonably detailed, and highly-invasive inquiry concerning their ability to repay. Many consumers place a premium on speed and anonymity when applying for a short-term, small dollar loan, and as the Bureau itself has suggested, consumers worry about the stigma associated with obtaining a payday loan.[2] Credit unions have built a stellar reputation as trustworthy and accessible places for obtaining responsible lending products of all types, which allow the member to address their immediate financial needs in a fair and responsible manner. However, the proposed rule would defeat these efforts by erecting time-consuming and costly barriers for consumers who want timely relief from financial distress.

FCUs do not market usurious small dollar loans, and are in fact statutorily barred from doing so. NAFCU agrees with the Bureau's own assessment that "[PAL] loans currently offered by FCUs appear to be substantially safer with regard to risk of default, re-borrowing, and collateral harms from unaffordable payments than many alternative products on the market today." However, the Bureau should also recognize that PAL loans represent the upper-end of acceptable interest rates, and that credit unions are also subject to a general interest rate ceiling pursuant to the FCU Act. Given these consumer friendly aspects of credit union lending, and the natural characteristics of credit unions as not-for-profit, member-owned cooperatives, NAFCU urges the CFPB use its statutory authority to completely exempt credit unions from its payday lending rulemaking.

The Bureau should exercise its authority under Section 1022 of the Dodd-Frank Act to provide an exemption for credit unions.

Section 1022(b)(3)(A) of the *Dodd–Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act) provides the CFPB with broad authority to grant exemptions on a rule-by-rule basis from its rulemakings. Specifically, this section of the Dodd-Frank Act directs the following:

[2] Payday, Vehicle Title, and Certain High-Cost Installment Loans, 81 Fed. Reg. 47864, 47899 (July 22, 2016) (hereinafter Proposed Rule).

> "A) IN GENERAL.— The Bureau, by rule, *may conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services*, from any provision of this title, or from any rule issued under this title, as the Bureau determines *necessary or appropriate to carry out the purposes and objectives of this title* the factors in subparagraph (B).
>
> (B) FACTORS.— In issuing an exemption, as permitted under subparagraph (A), the Bureau shall, as appropriate, take into consideration—
>
> (i) the total assets of the class of covered persons;
>
> (ii) the volume of transactions involving consumer financial products or services in which the class of covered persons engages; and
>
> (iii) existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections." (Emphasis added) [3]

NAFCU believes that this statutory exemption clearly contemplates the availability of relief for the nation's member-owned, not-for-profit credit unions, if only the CFPB would choose to fully exercise its authority. According to the Dodd-Frank Act, the factors the Bureau would need to consider in using its exemption authority, such as the credit union industry's total assets, transaction volume, and the already-existing consumer protections, all undoubtedly favor the application of an exemption by the Bureau in this rulemaking.

Credit unions are clearly not similar to the type of unscrupulous, predatory lenders that the Bureau is trying to regulate. In fact, the Bureau has publicly stated that it views the PAL loan program offered by credit unions as a "good product" and has identified it as a model to be emulated, including the program as inspiration for one of the proposed rule's conditional exemptions.

Since the enactment of the Dodd-Frank Act, over 1,500 federally-insured credit unions have been forced to close their doors or merge with other credit unions. That amount represents over 20 percent of the industry, and this rate of loss has only increased since the creation of the CFPB. An overwhelming regulatory environment that provides one-size-fits-all regulations in response to the issues facing our nation's consumers has caused this unfortunate result for community-based financial institutions like credit unions. Although the CFPB has openly acknowledged that credit unions are not bad actors preying on unsophisticated consumers, the CFPB's actions have indiscriminately targeted the entire short-term, small dollar lending market without any substantive consideration of the unique structure of and services offered by credit unions. Instead, credit unions have been swept up without justification due to the overly broad structure

[3] Pub. L. No. 111-203, Title X, § 1022(b)(3)(A) (Jul. 21, 2010).

of this rulemaking. Consequently, the time has come for the Bureau to fully apply its congressionally granted statutory authority to tailor the proposed payday lending rule to just those truly predatory lenders, and to grant a complete exemption for credit unions.

The Intent of Congress is clear

Congress has definitively shown its support for a credit union exemption from certain rulemakings by the Bureau through the use of the Section 1022(b)(3)(A) exemption authority. For example, as the Bureau is well-aware, bipartisan supermajorities from both the House of Representatives and the Senate have sent letters to the CFPB to encourage the Bureau to use its exemption authority to benefit and protect credit unions and their more than 103 million members nationwide.

More specifically, earlier this year, 329 Members of the House of Representatives and 70 Senators from both sides of the aisle sent a letter to the Bureau reminding the CFPB that Section 1022(b)(3)(A) was included within the Dodd-Frank Act for a reason, and Congress intended for the CFPB use this authority to specifically tailor regulations that recognize diversity in the financial services sector. In a letter sent to Director Corday in March 2016, 329 House members wrote:

> "When Congress passed the Dodd-Frank Act, it specifically recognized the need to tailor regulations to fit the diversity of the financial marketplace. Section 1022(b)(3)(A) gives the CFPB the authority to adapt regulations by allowing it to exempt "any class" of entity from its rulemakings. As you undertake rulemakings, we urge you to consider the benefits credit unions and community banks provide and ensure that regulations do not have the unintended consequences of limiting services or increasing costs for credit union members or community bank customers."[4]

In addition, in their respective letters, the House of Representatives and Senate further urged the Bureau to consider the proven benefits of credit unions and to adjust their regulations accordingly so as not to negatively impact the ability of credit unions to provide a variety of financial products and services to their members. Supporting this view, nearly three-quarters of the Senate wrote:

> "Credit unions and community banks provide safe and sound lending opportunities for their members and customers. Their focus on local lending and community development and the close-knit relationship they develop with those

[4] Letter from Adam B. Schiff, et al., U.S. Members of the House of Representatives, to CFPB Director Richard Cordray (Mar. 14, 2016), *available at* https://www.nafcu.org/News/2016_News/March/329_House_members_ask_CFPB_to_exempt_CUs/.

> they serve is essential to preserve. As you consider consumer protection regulations, we urge you to account for the burden associated with compliance, particularly for smaller entities such as credit unions and community banks."[5]

The intent of Congress in its inclusion of Section 1022(b)(3)(A) is clear and there can be no doubt that credit unions can and should be completely exempt from the payday lending rulemaking.

CFPB should Truly Consider a Credit Union Exemption

NAFCU would like to clarify that we and our members are merely requesting that the Bureau critically evaluate the unique composition and motivations of the credit union industry, the extensive differences between credit unions and other financial service providers – especially predatory payday lenders, and how this rulemaking may significantly damage the credit union structure and functionality with regards to short-term, small dollar lending. Thus, for purposes of the payday lending proposed rule, the CFPB should engage in a thorough evaluation of its exemption authority. NAFCU is confident that the Bureau, equipped with a complete analysis and supporting data, would conclude that credit unions should be exempted from the payday lending rule because they are clearly different than actors that are engaged in predatory lending practices.

No Evidentiary Support for Including Credit Unions in this Rulemaking

In addition, NAFCU believes the Bureau should exercise its exemption authority because the payday lending proposal lacks sufficient (or any) evidentiary support necessary to declare that credit unions present the same risks as other, non-depository payday lenders. Outside of the PAL loan context, the near entirety of data the Bureau relies upon to identify potentially unfair or abusive practices fails to distinguish or even measure credit union lending activity.[6] It is a well-established principle in administrative law that when developing a proposed rule, an agency "has an obligation to make its views known to the public in a concrete and focused form so as to make criticism or formulation of alternatives possible."[7]

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[5] Letter from Joe Donnelly, et al., U.S. Members of the Senate, to CFPB Director Richard Cordray (July 18, 2016), *available at* https://www.nafcu.org/News/2016_News/July/70_senators_sign_NAFCU-supported_CFPB_exemption_letter/.
[6] The Bureau's supporting research overwhelmingly emphasizes products offered by non-depository institutions. *See* Proposed Rule *supra* note 2, at 47867, n. 13. Furthermore, credit-union specific data is severely lacking. For example, the analysis on deposit advanced products was aggregated for all depositary institutions. *See* Bureau of Consumer Fin. Prot., *Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings*, 7 n. 8, 26 n. 30 (2013), *available at* http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.
[7] Home Box Office, Inc. v. FCC, 567 F.2d 9 (D.C. Cir. 1977).

Unfortunately, the Bureau appears to have passed on an opportunity to explain why credit unions present the same potential for harm as non-depository, predatory payday lenders. Without any solid foundation of factual evidence to support the underlying proposed rule as it applies to credit unions, a court would likely not have the ability to sustain the Bureau's reasoning upon judicial review. Even under the deferential standard established by *Chevron USA. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), "agencies must operate within the bounds of reasonable interpretation."[8] A particular rulemaking fails to meet this standard where it "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[9]

NAFCU recommends that the Bureau suspend development of a final payday lending rule until it has revisited its core assumptions about credit unions with relevant data, which is likely to provide further proof that a credit union exemption is warranted. In sum, the Bureau must approach the issue of payday lending with greater nuance because a "regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist." [10]

To ensure the continued existence of short-term, small dollar lending programs offered by credit unions, which serve as a viable alternative to predatory payday lenders, NAFCU recommends the Bureau apply its Section 1022(b)(3)(A) exemption authority to credit unions conducting short-term, small-amount loans in accordance with current state or federal laws, such as the PAL loan program.

The Bureau should not promulgate a final rule under its UDAAP authority when it lacks a reasonable basis to conclude that credit union loan programs are problematic.

The CFPB's reliance on its Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) authority under Section 1031 of the Dodd-Frank Act is misplaced. The research conducted by the Bureau and the resulting data does not support the application of this rule to the credit union industry. In the payday lending proposal, the Bureau articulates descriptions of "Unfair" and "Abusive" acts and adopts the Federal Trade Commission (FTC) standard for evaluation of agency rulemaking under its unfair and deceptive standards. Specifically, the FTC standard provides that "there must be a 'reasonable relation' between the act or practice identified as unlawful and the remedy chosen by the agency."[11]

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[8] Michigan v. Environmental Protection Agency, 135 S. Ct. 2699, 2707 (2015).
[9] Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).
[10] City of Chicago v. Federal Power Commission, 385 F.2d 629, 742 (D.C. Cir. 1967).
[11] Proposed Rule *supra* note 2, at 47900.

In the proposed rule, the Bureau explains that it conducted a variety of studies to provide justification for its proposal. However, a thorough review of the five studies cited by the CFPB reveals that there is a serious lack of data to support the application of the proposal to credit unions.[12] The CFPB consistently used data from payday lenders obtained through various methods, but few of its studies included credit union specific data, and many did not even include depository institutions as a whole. Without any relevant data from credit unions to identify unfair or abusive acts, there is no "reasonable relation" to validate an across-the-board regulation of their short-term, small dollar lending programs.

The fact that the Bureau studied primarily storefront and online payday lenders, not depository institutions such as credit unions, strongly suggests that the proposal should only apply to those types of lenders. Focusing research on a type of product under a generalized, sweeping definition while ignoring specific lenders does not justify such a broad rule. Instead, this approach warrants only a narrowly tailored rule to address the specific practices of payday lenders—not a rule that that affects the entire financial services industry without regard for good actors. Unlike nonbank lending products, credit union short-term, small dollar loan products are already heavily regulated by NCUA. The CFPB's proposal provides almost no information to explain why these types of products, when offered by credit unions, present the same concerns associated with other, non-depository lenders.

In fact, the only credit union data the Bureau seems to have considered related to credit unions' short-term, small dollar lending activity was found in the CFPB's Consumer Complaint Database. A search of complaint data starting from July 2011 when the CFPB first started accepting complaints through today's date shows that consumer complaints involving credit unions amount to a mere 0.04 percent of the total complaints in the database related to payday loans. The CFPB's public database only includes credit unions under the CFPB's supervisory authority, that is, those credit unions over $10 billion in assets. Even still, credit unions are only the subject of two of 4,559 complaints on payday loans, an extremely low complaint volume. Such a trend is a clear indicator that credit unions are not the bad actors in this space. As a result, credit unions should not be the target of the CFPB's payday lending rulemaking if they are not engaged in the types of harmful acts and practices that consumers are complaining about to the Bureau. Credit unions should clearly not be included in the CFPB's rulemaking on payday lending.

Furthermore, proposing this rule under the Bureau's UDAAP authority is likely to lead to compliance difficulties and duplicative disclosure requirements. Short-term, small dollar loans are considered "credit" under the *Truth in Lending Act*[13] (TILA) and its implementing regulation, Regulation Z.[14] TILA was intended to prevent predatory creditor practices, and payday loans are already subject to certain disclosure requirements under Regulation Z. The Bureau's proposed payday lending rule is likely to lead to consumer confusion because short-

[12] Proposed Rule *supra* note 2, at 47867 n.13.
[13] 15 U.S.C. § 1601, *et seq.* (1976).
[14] 12 C.F.R. Part 1026 (2014).

term, small dollar loans are already addressed in TILA and Regulation Z. Those institutions that are "lenders" under the proposed rule and "creditors" under Regulation Z will likely be subject to conflicting and duplicative disclosure requirements.

The creation of new and potentially duplicative disclosure requirements would be burdensome for credit unions. Credit unions have limited resources and cannot afford the additional expense associated with periodically supplying consumers with multiple, unique notices for loan products that are already heavily regulated.

Instead of clarifying and simplifying the loan process for consumers, inconsistent disclosures may actually further confuse consumers and lead to even more complaints about payday loans. Such confusion may also have the unintended consequence of reducing access to credit because consumers may be overwhelmed with information about the process that is difficult to comprehend for even the most sophisticated consumer. Rules that provide different standards and confusing disclosures for the same activities and products only lead to a more complex and jumbled regulatory landscape. This will not help consumers and it will certainly impose a large burden on providers, especially those such as credit unions, which do not engage in abusive practices. Therefore, the Bureau should not move forward with the proposed rule pursuant to their UDAAP authority and instead issue a revised proposal that better aligns with the requirements in TILA and Regulation Z.

Changes to the Payday Alternative Loan (PAL loan) program will disrupt a well-established, model lending standard.

NAFCU appreciates that the Bureau has identified consumer friendly lending standards in NCUA's PAL loan program. The fact that the conditional exemption described in Section 1041.11 substantially mirrors NCUA's own regulations should signal to the Bureau that credit unions are model lenders not in need of additional supervision. NAFCU also supports the Bureau's decision to preserve NCUA's discretion to periodically recalibrate the PAL loan interest rate ceiling, as well as its reconsideration of the three loan maximum available to borrowers over a rolling, six-month period. Yet, proposed restraints on the PAL loan program would compromise the ability of lenders to take advantage of this program at low cost.

Credit unions currently offering PAL loans are already subject to enhanced scrutiny and underwriting guidelines. PAL loans are highly regulated and designed to be safe alternatives to predatory, payday products. PAL loans are the only type of loan exempt from the FCU Act general rate ceiling, and carry an interest rate cap of 28 percent. Often these loans are loss leaders for credit unions and offered strictly for the benefit of members. The PAL loan program has earned credit unions a reputation for being trustworthy, consumer-friendly institutions.

The Bureau's proposal would cause substantial disruption with the PAL loan program and create new burdens never contemplated by NCUA when it developed its PAL loan regulations.

Although the proposed rule retains certain aspects of the PAL loan program, it would encumber credit unions with the following limitations:

1. Erode the authority granted to credit unions under the FCU Act to impose a statutory lien on member accounts and exercise set-off rights.[15]
2. Change the minimum term for an exempt, PAL-type loan from 30 days to 46 days. [16]
3. Require additional reporting functionality to consider whether an affiliate has issued a covered loan during the cooling off period.[17]
4. Require that PAL loans conform with the rule's record retention and compliance program requirements.[18]

Proposed withdrawal rules conflict with credit unions' right to enforce a statutory lien on member accounts.

NAFCU and its members are concerned that the CFPB seeks to displace NCUA's regulations regarding payment transfers with its own. The proposed rule would "identify as an abusive and unfair practice" as a lender's attempt "to withdraw payment from a consumer's account in connection with a covered loan after the lender's second consecutive attempt to withdraw payment from the account has failed due to a lack of sufficient funds," even for loans made under the PAL conditional exemption.[19] This provision cannot be reconciled with Section 1757(11) of the FCU Act, which provides that a federal credit union "shall have power . . . to impress and enforce a lien upon the shares and dividends of any member, to the extent of *any loan* made to him and any dues or charges payable by him."[20] NAFCU believes that the Bureau's proposal regarding withdrawal of payments for all covered loans improperly restrains credit unions from exercising a statutory right of offset granted by the FCU Act.

Additionally, the statutory lien practically functions as a safety and soundness feature designed to protect the solvency of the National Credit Union Share Insurance Fund (NCUSIF). Because the right to enforce a statutory lien is not a consumer protection feature, the Bureau's attempt to modify this right goes beyond its rulemaking authority under the Dodd-Frank Act. Rick Metsger, Chairman of the NCUA Board, recently wrote to the Bureau discussing his concern with this provision of the proposed rule:

> "Several provisions of the proposed rule restrict the use of certain security interest procedures for covered credit. The FCU Act expressly authorizes FCUs "to impress and enforce a lien upon the

[15] Proposed Rule *supra* note 2, at 48048.
[16] Proposed Rule *supra* note 2, at 48143.
[17] Proposed Rule *supra* note 2, at 48036, 48174.
[18] Proposed Rule *supra* note 2, at 48174, 48181.
[19] Origination of conditionally exempt PAL loans would still require a lender to comply with the limitation on payment transfer attempts in proposed § 1041.14, the consumer rights notice in proposed § 1041.15(d), and the compliance program and record retention requirements in proposed § 1041.18.
[20] 12 U.S.C. §1757(11) (emphasis added).

> shares and dividends of any member, to the extent of any loan made to him and any dues or charges payable by him…" NCUA recommends the Bureau clarify in the final rule that it does not intend to narrow or otherwise alter the circumstances in which a credit union can use a Congressionally-authorized statutory lien."[21]

NAFCU agrees with Chairman Metsger's assessment. NAFCU believes that the proposed payment withdrawal rules would implicate limitations in 12 U.S.C 5517(r), which provides that nothing in the Dodd-Frank Act "shall affect the [NCUA] Board under the FCU Act as to matters related to deposit insurance and share insurance, respectively."[22] Arguably, the statutory lien is a right granted to credit unions to ensure the solvency of the Share Insurance Fund. Accordingly, the Bureau should defer to NCUA's rules relating to the exercise of a statutory lien by credit unions.

Changing the minimum term for conditionally exempt, PAL loans would harm consumers already accustomed to the 30 day term prescribed by NCUA.

Short-term, small dollar loans that fall outside of the proposed 46-day window would no longer benefit from the PAL loan exemption contemplated by NCUA. The original, 30-day minimum term did not present any problems when the PAL loan program was first proposed—and the Bureau does not offer any evidence to demonstrate why it presents a problem now.[23] Without data to make its case, the Bureau's hypothetical concerns do not warrant substantial inconvenience to members seeking access to the 30-day PAL loans they are most familiar with.

Determining whether an affiliate has issued a covered loan during the cooling off period adds burden without explanation

Before issuing an exempt PAL loan, proposed Section 1041.11(c) would require a lender to review its own records *and* the records of its affiliates to determine whether a consumer would become indebted on more than the maximum number of loans within a period of 180 days. The rule modifies the terms of the PAL program envisioned by NCUA by requiring review of affiliate records. Although this change does not, by itself, encumber credit unions with a complex, new requirement, it is emblematic of the Bureau's prescriptive approach throughout the rule.

The Bureau has generally prided itself as being a data-driven organization that seeks to promote evidence-based strategies and reforms. Yet, the Bureau offers no data to indicate that credit

[21] Letter from NCUA Chairman Rick Metsger to CFPB (Oct 3, 2016), *available at* https://www.ncua.gov/newsroom/Documents/comment-letter-2016-oct-metsger-payday-rule.pdf.
[22] 12 U.S.C. 5517(r) (2006).
[23] Proposed Rule *supra* note 2, at 48042.

union affiliates—such as credit union service organizations (CUSOs)—are substantially engaged in payday lending, or that review of their records would be necessary to offset consumer harm. NAFCU asks that the Bureau revisit this component of its rule and provide a clearer explanation for why it is seeking to institute this change.

Requiring that PAL loans conform with the rule's record retention and compliance program rules puts additional strain on credit union document systems.

The rule adds new record retention requirements in proposed Section 1041.18 that would apply to all covered loans. These requirements would substantially increase the data security costs associated with maintaining large volumes of documenting evidence and developing the necessary procedures for contextualizing verification information for future underwriting.

To satisfy the compliance program requirement in proposed Section 1041.18, lenders would also need to develop policies to ensure the reliability of sophisticated underwriting procedures and record checks—a task that may grow in complexity if multiple vendors provide the underlying hardware and software infrastructure for origination systems.

Additionally, credit unions would need to provide a consumer rights notice under proposed Section 1041.15(d), even when originating a conditionally exempt PAL loan. The notice would require a credit union to alert the consumer after initiating two consecutive failed payment transfers from a consumer's account. Sending written notices within the required three business days would impose substantial costs on credit unions that rely on multiple vendors to assemble and transmit these types of notices.

The Bureau should respect NCUA's authority and expertise by not attempting to create a parallel set of regulations for the PAL program.

On October 3, 2016, NCUA submitted its response to the proposed rule. NAFCU supports NCUA's request for the CFPB to provide an "exemption for PAL loans made by federal credit unions in accordance with NCUA's Regulations from coverage of any final rule." NCUA explains its reasoning for such exemption as follows:

> "While the proposed rule included a conditional exemption for PALs compliant loans, it would nevertheless increase compliance burdens for credit unions and potentially divest NCUA of the flexibility to adjust its rule as it sees fit to reflect the unique characteristics of credit unions. As the Bureau itself acknowledges, it "has not observed evidence that lenders making loans under NCUA [PALs] program participate in widespread questionable payment practices." The Bureau

> should therefore defer to determinations of the FCU prudential regulator about this product."[24]

NCUA and NAFCU both agree that the proposed changes to the PAL loan program would increase compliance burdens for credit unions. Additionally, NAFCU believes that NCUA is the only appropriate regulator for the purpose of administering and prescribing regulations for the PAL loan program. The Bureau's attempt to second-guess NCUA on a product it developed would only create confusion and unnecessary tension between the two agencies.

Additionally, NAFCU agrees with NCUA that the proposed rule should not impair credit union authority to exercise a statutory lien on member accounts.[25] Not only does the proposal unnecessarily limit this authority without providing any rationale for overriding the intent of Congress—but it jeopardizes the safety and soundness of credit unions, as discussed in greater detail above.

The proposed rule would impose an unlawful, de-facto usury cap for covered, longer-term loans.

The proposal's lack of credit union data also highlights the Bureau's disregard for how this rule would actually impact credit unions' ability to offer covered loans. When many credit unions cannot bear the costs of complex compliance programs, the Bureau will achieve practically the same result as a usury cap.

Section 1027(o) of the Dodd-Frank Act specifies that the Bureau does not possess the authority to "establish a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, unless explicitly authorized by law."[26] Although the Bureau purports to respect this provision of the Dodd-Frank Act, the proposed ATR standards, consumer notice requirements, and burdensome record keeping provisions collectively operate as a de-facto rate ceiling for covered loans.[27] In short, the rule would make origination of covered loans too costly to be worthwhile for many credit unions and achieve the same result as a usury cap.

Although the Dodd-Frank Act does not define the term "usury", the Supreme Court has described the term with reference to "overcharges."[28] Clearly the Bureau's rule is directed at what it perceives as overcharges in the form of either interest rates or other fees included within the total cost of credit. Although the rule does not classify any particular type of loan as unlawful per se, it would explicitly prohibit lenders from making loans that exceed the 36 percent, all-in APR if they fail to comply with a host of costly underwriting requirements.

[24] Letter from NCUA to CFPB *supra* note 21.
[25] Letter from NCUA to CFPB *supra* note 21, at 3.
[26] 12 U.S.C. §5517(o).
[27] *See* Proposed Rule *supra* note 2, at 47912.
[28] *See* Beneficial Nat'l Bank v. Anderson, 539 U.S. 1, 11 (2003).

Lastly, the proposal explains that the 36 percent total cost of credit threshold is particularly suitable because "numerous state laws impose a 36 percent APR usury limit" and that the ceiling "reflects the judgment of those States that loans with rates above that limit are per se harmful to consumers."[29] On the basis of this language, the Bureau appears to endorse the idea that the proposed threshold would operates as a kind of de-facto ceiling to compliment state usury laws. Congress did not intend for the Bureau to escape the restraints in Section 1027(o) via the artifice of highly complex regulations that do not outright prohibit high-cost loans.

The total cost of credit model unreasonably restricts access to credit and invites conflict with NCUA regulations.

The Bureau's decision to use a total cost of credit model for the purpose of defining a covered longer-term loan adds unnecessary complexity to underwriting and hinders access to credit. For member loans, credit unions determine interest rate limits pursuant to the FCU Act and NCUA regulations, which currently define the general rate ceiling for member loans as 18 percent on the unpaid balance of the loan, inclusive of all finance charges.[30] NCUA has determined that finance charges are defined as they are under Regulation Z.[31] By contrast, the Bureau's total cost of credit definition includes numerous other types of fees and charges not encompassed by the Regulation Z definition of finance charge.[32]

The proposed rule would require a credit union to ask whether a loan complies with NCUA's usury limits, determined by reference to Regulation Z, and then to ask whether the loan exceeds the 36 percent, all-in APR as determined by the total cost of credit model. These layered requirements would not only erode NCUA's prudential authority to determine applicable interest rates for credit unions, but also add substantial costs when underwriting short-term, small dollar loans.

For example, a credit union that offers ancillary products traditionally excluded from the Regulation Z definition of a "finance charge" would need to program its underwriting systems to recognize these charges to clear both the general rate ceiling set by NCUA and the 36 percent total cost of credit threshold. Many credit unions rely on multiple vendors to maintain and integrate their underwriting systems with front-end loan origination software. Programming a total cost of credit model that is similar, but not identical to the Department of Defense's MAPR would require vendors to account for all possible methods of applying fees in order to generate the appropriate "all-in" APR.

[29] Proposed Rule *supra* note 2, at 47912.
[30] *See* 12 U.S.C. §1757(5)(A)(vi); 12 C.F.R. §701.21(c)(7)(i) (1984).
[31] *See* Legal Opinion, 91-0412 NCUA (Apr. 30, 1991) *available at* https://www.ncua.gov/Legal/OpinionLetters/OL1991-0412.pdf; *see also* 12 CFR 226.4 (2010).
[32] *Compare* 1041.2(a)(18)(ii), *and* Supp. I Part 1026.4(c) (describing exclusions for application fees, late payment charges, participation fees, lost interest, lump-sum charges and other insurance and debt cancellation services).

More significantly, NCUA's interpretative guidance regarding the use of Regulation Z to determine what types of fees are factored into interest rate *is subject to change*. NCUA has explained this in its own words:

> "Regulation Z is a disclosure regulation. Generally, it does not control the interest rate or other charges in a loan agreement; it merely imposes requirements for disclosure of those charges. While credit unions are bound by Regulation Z's definition of finance charge for disclosure purposes, NCUA alone has authority to determine which types of charges are included in the computation of interest for the usury ceiling set forth in the Act and Regulations." [33]

The Bureau's decision to promulgate a total cost of credit model for determining the applicable interest rate ceiling for longer-term loans is directly counter to the scope and extent of NCUA's authority. The Bureau should defer to NCUA's expertise as the credit union regulator and not seek to supersede its authority to determine the applicable interest rate ceiling for member loans.

Furthermore, to the extent that the Bureau finds the finance charge exemptions in Regulation Z inconvenient, Congress has explained that the purpose of those exemptions was to strike a balance between preventing consumer harm and avoiding unnecessarily complex and expensive underwriting processes to ensure a healthy financial marketplace:

> "(a) Informed use of credit
>
> The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices." [34]

If NCUA elects to use Regulation Z as the benchmark for determining the scope of a finance charge, and by extension the method for calculating a general interest rate ceiling for credit unions, then the Bureau should respect that decision.

In the alternative, the Bureau should consider a definition of APR that recognizes the voluntary, value-added aspect of services offered in connection with a covered, longer-term loan. A side-effect of the rule's complexity could be a reduction in credit-related products or services offered

[33] Legal Opinion, *supra* note 30.
[34] 15 U.S.C. § 1601 (1976).

in connection with a loan, and the consumer having less flexibility when seeking certain credit protection features. Moreover, the Bureau's concern for fees and ancillary products misses the mark with respect to federal credit unions that protect their members from usurious loans as matter of law.[35]

An appropriate definition of APR should generally exclude the cost of discrete products or services for value, freely chosen by the consumer, which have no impact on access to credit. For example, credit insurance is a product that consumers voluntarily purchase because it provides them with additional financial security. The Bureau's proposal does not provide any explanation for why consumers cannot exercise appropriate discretion when choosing to purchase this type of product in connection with a loan. Without a clear rationale for designating voluntary products as "fees" for the purpose of calculating the total cost of credit, the Bureau disregards its obligation under the *Administrative Procedure Act* (APA) to articulate "a rational connection between the facts and the agency's action."[36]

The Bureau's definition of a covered, longer-term loan encompasses many products that have never been traditionally considered payday loans.

The proposed rule's Section 1041.3(B)(2) defines a covered longer-term loan in *extraordinarily* broad terms:

> "(b) *Covered loan.* Covered loan means closed-end or open-end credit that is extended to a consumer primarily for personal, family, or household purposes that is not excluded under paragraph (e) of this section; and:
>
> . . .
>
> (2) For closed-end credit that does not provide for multiple advances to consumers, the consumer is not required to repay substantially the entire amount of the loan within 45 days of consummation, or for all other loans, the consumer is not required to repay substantially the entire amount of the loan within 45 days of an advance under the loan, and the following conditions are satisfied:
>
> (i) The **total cost of credit** for the loan exceeds a rate of 36 percent per annum, as measured at the time of consummation or at the time of each subsequent ability-to-repay determination [is] required . . .; and
>
> (ii) The lender or service provider obtains either a leveraged payment mechanism . . . or vehicle security . . . , at the same time as, or

[35] *See* Federal Credit Union Act, §107(5)(a)(vii).
[36] Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983); *see also* 5 U.S.C. § 706(2)(A).

> within 72 hours after the consumer receives the entire amount of funds that the consumer is entitled to receive under the loan." (Emphasis added.)[37]

In addition to the broad definition of a covered longer-term loan, the total cost of credit calculation is intended to be inclusive of all fees and charges without regard to whether such fees and charges are considered "finance charges" under Regulation Z. NAFCU believes the overwhelming scope of this definition, coupled with an unfamiliar "total cost of credit" calculation, would unnecessarily burden credit unions, which traditionally offer consumer friendly loans with low interest rates, as calculated under the Regulation Z requirements for an APR.

The Bureau notes that many different types of credit unions loans, despite having a relatively low periodic interest rate, would become covered, longer-term loans because of origination fees that would cause the total cost of credit to exceed 36 percent. NAFCU acknowledges the Bureau's finding that "in general, these loans tend to be a relatively small percentage of a lender's total lending portfolio and are made as an accommodation for a community bank or credit union's existing customers."[38] However, including these loans within the scope of the payday lending proposal merely because they are a "small percentage" of total lending is short-sighted. Although small, these loans tend to serve as a method for credit unions to accommodate a member's immediate financial need with the overall goal of getting the member into a more traditional lending product.

In an effort to accommodate these loans, the Bureau has proposed a relatively narrow exemption for covered, longer-term loans that achieves an annual portfolio default rate of not more than 5 percent. Specifically, proposed Section 1041.12 would provide lenders a conditional exemption from the ability-to-repay requirements generally proscribed for longer-term loans, so long as the longer-term loan meets certain conditions. Among other requirements, the covered loan must:

1. Not be structured as open-end credit;
2. Not have a term of more than 24 months;
3. Be repayable in two or more payments due no less frequently than monthly;
4. Completely amortize during its term; and
5. Carry a modified cost of credit less than or equal to an annual rate of 36 percent.

In addition to the criteria set above, the lender's portfolio of such loans would not be permitted to exceed a 5 percent default rate. If the portfolio exceeds a 5 percent default rate in one year, then the proposal would require the lender to return all origination fees paid by all borrowers that year for that type of loan.

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[37] Proposed Rule *supra* note 2, at 48168.
[38] Proposed Rule *supra* note 2, at 48039.

Although NAFCU understands the Bureau's desire to use a product's default rate as an indication of whether a loan is usurious, we re-emphasize the fact that these products are designed to meet the needs of low-income borrowers that often seek these loans during periods of financial distress. By their very nature, financial emergencies are unexpected, and no amount of underwriting can properly predict the future financial state of borrowers that experience such emergencies.

NAFCU believes that low-income borrowers seeking short-term, small dollar loans will manifest inherently riskier characteristics when compared with other borrowers, which may contribute to higher default rates. However, higher default rates do not necessarily indicate that a loan is per se usurious, as the Bureau seems to believe. To reiterate a common theme, credit unions offering PAL loans and similar short-term, small dollar products do so in order to accommodate their members. These loans programs are often loss-leaders because credit unions want to help their members recover from financial emergencies without burdening them with additional cycles of debt. Yet the Bureau intends to second-guess the ethical priorities of credit unions and insist that emergency loans must possess the characteristics of profitable loans—at least with respect to default rates.

Additionally, requiring lenders to refund fees under proposed Section 1041.12(d)(2) when the portfolio default rate exceeds 5 percent would amount to a harsh and unreasonable penalty, particularly when many credit unions do not typically generate much profit from this type of short-term, small dollar lending. Furthermore, in order to process a consumer's refund within thirty days, a credit union would need to institute a costly processing system, potentially involving multiple vendors to account for variable capacity, on the off-chance that its portfolio default rate slips above the 5 percent threshold. These costs would generally translate into reduced access to credit for members who genuinely need help. Accordingly, NAFCU asks that the Bureau increase the portfolio default rate. A higher default rate tolerance would better accommodate the inherently unstable financial predicament that short-term, small dollar loan borrowers experience and acknowledge that changes to market conditions can result in inflated default rates, which occurred during The Great Recession.

Also, the Bureau should recognize that the default tolerance fixed in the final regulation would not mirror the actual default tolerance used by lenders. Practically, few lenders would establish a product line that has a default rate anywhere near the Bureau's rate and most would likely choose to build a buffer zone in order to avoid being impacted by unexpected swings in the economy or other circumstances that would increase borrower delinquencies.

An increase or decrease in the default rate is not necessarily a reflection of the loan product. For example, according to recent NCUA Call Report data, 7.63 percent of PAL loans were written off.[39] Because the Bureau is exempting loan products that meet the requirements of NCUA's PAL program, NAFCU believes that the Bureau should adjust the default rate under Section

[39] NCUA, Call Report Quarterly Data (June 2016), *available at* https://www.ncua.gov/analysis/Pages/call-report-data/quarterly-data.aspx.

1041.12 to more closely mirror the actual performance and default rate of PAL loans. As such, NAFCU strongly urges the Bureau to set a higher default rate than the proposed 5 percent.

NAFCU asks that the Bureau recognize that credit unions should not bear the costs of such extensive requirements when they are consistently identified as model lenders who have developed some of the most consumer-friendly loan products in the marketplace. NAFCU agrees with the Bureau's observation that "the vast majority of the personal loans made by banks and credit unions have a total cost of credit of 36 percent or less."[40] Such a finding should, if anything, support the notion that credit unions do not need additional supervision or costly new underwriting standards. Accordingly, the Bureau should consider exempting credit unions from all proposed longer-term loan rules.

Classification of vehicle refinances as covered loans may discourage consumers from obtaining more affordable car loans.

Proposed Section 1041.3(b)(2)(ii) would include vehicle title loans within the scope of covered, longer-term loans. Although the rule would not prevent a lender from obtaining a vehicle security when originating a loan, the proposal makes no similar accommodation for vehicle refinances. NAFCU believes that subjecting vehicle refinances secured by a vehicle title to ATR requirements would cause harm to consumers who have trouble paying off their car loans. Moreover, the Bureau's attempt to designate vehicle refinances offered by credit unions as covered loans is not based on actual data or evidence concerning credit union lending.[41]

NAFCU asks the Bureau to recognize that verification of ATR in every situation may result in borrowers deciding not to refinance a car loan, which could save them money. Borrowers may perceive the ATR inquiry as inefficient, particularly if they face a presumption of unaffordability. Credit unions should not have to verify income for seasoned borrowers with excellent credit repayment histories. Exempting vehicle refinances from the rule entirely would benefit consumers who want to take advantage of fairer and friendlier lending relationships at their credit unions.

In lieu of exempting auto refinances entirely from the rule, NAFCU asks the Bureau to bifurcate vehicle refinance loans based on the intent of the product. For example, NAFCU urges the Bureau to consider exempting vehicle refinances that do not contain a "cash-out" option.

Although NAFCU understands that the proposed rule is intended to curb the practice of securing predatory payday loans through a borrower's vehicle title, not all vehicle refinance loans are intended to provide short-term, small dollar loans. Many of NAFCU's members provide vehicle

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[40] Proposed Rule *supra* note 2, at 47891.

[41] Consumer Financial Protection Bureau, *Single-Payment Vehicle Title Lending* (2016), *available at* http://files.consumerfinance.gov/f/documents/201605_cfpb_single-payment-vehicle-title-lending.pdf ("Our analysis of vehicle title loans in this report does not include products offered by depository institutions, such as the refinancing of an existing vehicle loan in which the borrower takes cash out.").

refinance loans that do not contain "cash-out" provisions, and as such, are clearly intended to simply refinance a car loan for the purposes of providing a better rate or more favorable terms. This results in saving money for members.

Because these loans do not convey cash to the borrower, these products are not designed to meet borrower's short-term, small dollar credit needs, and thus are of a different nature than the loans that the Bureau is proposing to regulate. Accordingly, NAFCU believes that exempting these limited-use refinance products would provide consumers with the benefit of lower rates through refinancing, while still meeting the Bureau's goals of regulating vehicle refinancing products that are intended to provide short-term, small dollar loans.

Consumers may also lose on potential savings if they are attempting to refinance a car loan while a covered loan remains outstanding. In such circumstances, the refinance may trigger a presumption of unaffordability, making it harder for the consumer to obtain more favorable repayment options at precisely the moment when they are in need of relief.

Payment transfer rules should exempt internal collection attempts that do not incur a fee to the deposit holder.

Payment withdrawal rules for lenders who hold funds on deposit in the consumer's name should be relaxed in cases where the lender does not charge a fee after attempting to collect from the account. Sections 1041.11(e)(ii) and 1041.14 would generally prohibit the exercise of any kind of set-off right by a lender to collect on the loan. The Bureau should consider an exception for lenders who do not charge non-sufficient funds (NSF) fees after sweeping an account and recovering less than the full amount owed on the loan. Such an exemption would strike a fair balance between providing the consumer relief from fees and recognizing the lender's reasonable expectation of timely repayment.

Additionally, the Bureau should reconsider its decision to categorically designate consecutive, failed payment withdrawal attempts as an unfair and abusive practice. The harm associated with multiple, failed payment withdrawal attempts is almost universally understood in terms of the borrower's risk of accruing NSF fees. Accordingly, the Bureau should not classify as unfair or abusive payment withdrawal attempts that do not incur fees.

Information collection requirements would substantially raise compliance costs.

Many credit unions offering covered loans would not be able to continue offering these products if they become subject to expansive collection requirements imposed by new ATR rules. Gathering and reporting the data necessary to determine ATR, or overcome a presumption of unaffordability, imposes substantial compliance overhead on credit unions that will negatively influence access to credit.

For example, lenders that report loan information to registered information systems will be subject to the *Fair Credit Reporting Act* (FCRA) as users and furnishers of consumer reports. Complying with the FCRA involves ensuring the accuracy of reported information and notifying consumers after furnishing negative information. As the Bureau notes in its proposal, credit unions "generally do not furnish loan information to or obtain consumer reports from specialty consumer reporting agencies."[42] These requirements would greatly increase operational costs.

Even minor amendments to standard loan documents can yield substantial costs. The sophistication of credit union document processing and database systems generally corresponds with institutional size and complexity. To be clear, credit unions do not possess the sophisticated systems that the Bureau encounters in the course of examining larger depository institutions. Unlike big banks, credit unions typically work with multiple vendors to meet compliance burdens and update their underwriting protocols. Whereas a large bank with several hundred billions in assets may easily employ dozens of in-house software engineers to quickly rewrite database software to account for new disclosure forms, information pulls, or reporting requirements, a credit union must coordinate with multiple entities to make even small changes to internal systems.

To modify a single document, such as a consumer rights notice required under Section 1041.15(d), a credit union would need to: (1) contact its document provider; (2) educate the provider about new regulatory requirements; (3) ensure that the document provider makes the correct changes; (4) ensure document compatibility with Loan Origination System and Data Processor services; and (5) develop a front-end interface so that loan officers can actually access and use the document on a shared network. Adapting systems to accommodate new types of verification evidence would present similar problems, with the additional burden of certifying that new record retention databases are equipped with appropriate data security safeguards.

NAFCU understands that the Bureau places a great deal of faith in the ability of software to reduce compliance costs; however, the systems integration necessary to process and collect borrower data would represent a substantial investment, likely exceeding the profit most credit unions would earn on short-term, small dollar loans.[43] Most credit unions do not possess highly sophisticated software for underwriting short-term, small dollar loans, and instead rely on various third parties to coordinate notice and disclosure activities or process automatic payments. For many credit unions, the high cost of software upgrades merely to originate an insubstantial number of covered loans will likely discourage covered lending altogether. Accordingly, NAFCU reiterates its request that the Bureau consider exempting all credit unions from its proposed rule using its Section 1022(b)(3)(A) authority under the Dodd-Frank Act.

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[42] Proposed Rule *supra* note 2, at 48043.

[43] Victor Stango, *Are Payday Lending Markets Competitive?*, Cato Institute, 26 (Fall 2012), *available at* http://object.cato.org/sites/cato.org/files/serials/files/regulation/2012/11/v35n3-5.pdf.

Ability to repay requirements should not necessitate an expansive inquiry concerning a borrower's major financial obligations and basic living expenses.

NAFCU is concerned that the Bureau's proposal does little to clarify what types of expenses are considered major financial obligations or basic living expenses. For example, a major financial obligation could encompass medical debt. Depending on what state laws are applicable to the transfer of protected health information, which includes information about payment for health care that can be linked to an individual, lenders may find it unreasonably difficult to forecast a borrower's debt obligations.

The term "basic living expenses" is similarly broad in scope and potential application. NAFCU urges the Bureau to establish clear guidelines for how lenders should weigh particular types of verification evidence so they can help borrowers overcome a presumption of unaffordability. An unambiguous standard would accelerate the underwriting process and allow borrowers to have access to credit when they need it. As written, the proposal insists on "reasonableness" throughout every aspect of the ATR inquiry—a process many borrowers may perceive as taking too long when an emergency arises. For example, borrowers may not understand how to satisfactorily comply with the process described in proposed Section 1041.5(c)(3)(i) for submitting written verification statements. For consumers with irregular work schedules, temporary living arrangements or multiple dependents, predicting with accuracy the timing of income receipts and debts may be impossible.

The Bureau has noted that in some cases, overcoming a presumption of unaffordability may require a lender to draw inferences about a consumer's unique financial circumstances. The rule offers the example of an emergency car repair or "unusual" medical expense. Even though the Bureau appears optimistic that lenders will continue to accommodate consumers in unusual circumstances, the reality is that most lenders do not have the capacity or the risk appetite to engage in bespoke underwriting. To the extent that the Bureau wishes to account for emergencies but not carve out a sweeping exception to its rule, NAFCU urges development of a safe harbor for ATR.

Credit unions need a safe harbor to offset compliance costs.

NAFCU believes that a safe harbor for determining ability to repay is necessary to reduce compliance costs for credit unions that offer covered loans. Many credit unions do not generate significant profit from payday products, and in most cases actually lose money or have established loss funds to help finance short-term, small dollar loans.[44] Credit unions generally do not proactively market these covered loans and merely offer them as accommodations for their members rather than as core product lines.

[44] Even in the context of the PAL program, according to this year's most recent Call Report, only 14.2% of federally-insured credit unions have outstanding PAL loans. This is indicative of the larger trend that short-term, small-dollar loans represent just a modest portion of the products serviced by credit unions.

Many credit unions also bear inherent risk when forecasting a borrower's expenses or projected improvement in financial capacity, and the absence of any safe harbor might make future short-term, small dollar lending unsustainable. For example, the complexity and breadth of requirements a lender would need to comply with just to overcome a presumption of unaffordability would, in most cases, not be worth the cost. NAFCU asks that the Bureau reconsider using some combination of payment-to-income, APR or debt-to-income ratio to determine a safe harbor for underwriting covered loans. Currently, the proposed rule sacrifices access to credit in order to accommodate an unreasonably rigid outlook on consumer risk.[45]

Not only would a safe harbor benefit credit unions, it would also provide consumers with a faster and more streamlined application process. As discussed previously, credit unions must remain competitive in terms of ease of access to retain member business. The alternative would result in consumers turning to precisely the sort of predatory lenders the Bureau is most eager to regulate.

As member-owned, not-for-profit cooperatives, credit unions have demonstrated no desire to capitalize on the predatory aspects of payday products, and the Bureau has presented no evidence to suggest that credit unions' service-oriented prerogative has changed. Accordingly, NAFCU asks that the Bureau identify effective safe harbors to help credit unions continue to meet their members' credit needs.

The Bureau should also clarify what it considers to be a "clear inflection point" in regard to unacceptable consumer risk.[46] As written, the statement could be construed to mean that the Bureau has already identified an acceptable rate of repayment for certain types of borrowers based on a fixed payment-to-income ratio, despite the fact that the proposed rule would offer no safe harbor on the basis of PTI alone. If the Bureau has reached any such conclusion, it should share that information publicly.

CDFIs should be granted an exemption from proposed ATR requirements.

NAFCU urges the Bureau to exempt CDFIs, a growing number of which are credit unions, from proposed ability to repay requirements. Based on previous rulemakings, such an exemption would fit the Bureau's own framework for promoting access to credit. In its final rule for Ability-to-Repay and Qualified Mortgage (QM) rule under TILA, the Bureau determined that an exemption for CDFIs from ATR requirements was desirable, not only because CDFIs "typically engage in a lengthy underwriting process that is specifically tailored to the needs of [...] of

[45] The Bureau's proposed comment 5(b)-4 provides a list of methods that "may" be reasonable for determining a consumer's basic living expenses, but offer no safe harbor. Method A requires the lender to develop a statistical survey of similarly situated customers, and Methods B and C must be "accurate" and "reliable" without any further explanation.

[46] *See* Proposed Rule *supra* note 2, at 48040.

consumers," but also because ATR requirements would burden access to credit in low-income communities. This same logic similarly applies to loans considered under this rule.

Additionally, credit unions seeking the CDFI designation must already undergo a screening process related to the ability of applicants to provide affordable, responsible credit and must operate in accordance with the requirements of these programs. Accordingly, NAFCU asks that the Bureau consider the needs of low-income communities and how specific exemptions can be applied to CDFIs to ensure members still have access to short-term, small dollar loans.

Such an exemption would also be consistent with Section 1206 of Dodd-Frank. Section 1206 amended the *Community Development Financial Institutions Act* (CDFI Act) to direct financial assistance to CDFIs in order to "defray the costs of operating small dollar loan programs" and "encourage [CDFIs] to establish and maintain small dollar loan programs." Providing CDFIs an exemption from this rule would certainly help defray the costs of operating short-term, small dollar loan programs, and as such, meet the intent of Section 1206. In the alternative, NAFCU recommends that the Bureau suspend the inclusion of CDFIs within this proposed rulemaking until it has formally considered ways to mitigate the compliance costs to CDFIs.

The Bureau should recognize that the rule could create liquidity problems for borrowers during the proposed cooling-off period and impact borrower credit scores.

NAFCU is concerned that the Bureau has overlooked the harm associated with requiring a borrower to wait fixed intervals before obtaining additional, covered loans. If the Bureau's conclusions about consumer expectations are accurate—that is, that they hold "unrealistic expectations about their future earnings, their future expenses, and their ability to save money to repay future obligations"[47]—then consumers may face a liquidity crisis while they wait to renew their covered loan eligibility.

Under proposed Section 1041.10(e), a lender would be prohibited from making a longer-term loan during or within 30 days after the borrower has a covered short term loan. Proposed Section 1041.6(f) would also prohibit a lender from making a covered, shorter-term loan during or within 30 days if the new loan would be the fourth in a sequence of covered shorter-term loans. The proposed rules would operate as a cooling-off period for the borrower. However, the downside of this approach is that the borrower would be subject to a period of restrained credit access, and any liquidity problems during the cooling-off period would be greatly magnified. In such circumstances, borrowers may find themselves turning to unlicensed predatory payday lenders just to pay a single bill or expenses — yet these online or offshore lenders present the greatest risks to financially distressed consumers.

Moreover, by requiring an ability to repay determination whenever a borrower seeks a non-exempt, covered loan, the proposed rule places added stress on consumer credit scores. If a

[47] Proposed Rule *supra* note 2, at 47992.

lender must pull a consumer report in every instance where they lend to repeat borrowers, the cumulative impact on the borrower's credit score could be substantial and undercut future savings associated with a higher credit score. In addition, since average age of account is a factor in an individual's credit score, the inclusion of several short-term, small dollar loans on a credit report is likely to substantially minimize the consumer's average age of account and could also negatively affect that consumer's credit score.

The Bureau should study and consider a 5 percent PTI safe-harbor for underwriting covered loans in lieu of its current overly-complex approach to underwriting.

The Bureau has solicited comment on whether a payment-to-income ratio could serve as a suitable metric for determining an underwriting safe harbor—that is, requiring a lender to establish affordable monthly installment payments of no more than 5 percent of a borrower's monthly income (or 6 percent of monthly deposits) and a reasonable term of up to six months. For credit unions to continue offering short-term, small dollar loans at accessible prices, a substantially less complex underwriting standard is needed than what is offered in the current payday lending proposal.

In order to comply with the proposed rule's full suite of ability to repay requirements, a lender would need to verify income, make at least two external data pulls, estimate expenses, and fully underwrite a loan. The cumulative costs associated with underwriting a covered loan would necessitate either charging a high price to their members or losing income on each loan. In general, when providing members with short-term, small dollar credit, credit unions tend to use streamlined underwriting processes based on in-house data of the members' accounts and their income history.

The type of streamlined underwriting standards, reasonable durations, affordable payments, and full amortization outlined under a 5 percent payment-to-income approach could be a far better system of regulating short-term, small dollar lending than those currently proposed by the Bureau. The 5 percent payment option could also serve to encourage more credit unions to enter the payday market and offer a range of short-term, small dollar products that are vastly superior to those offered by other lenders. The 5 percent payment to income safe harbor could allow for more income to lenders in order to cover operational and underwriting costs, while still establishing strong consumer protections.

Credit unions could be able to offer a greater volume of lower-cost, short-term, small dollar loans and protect consumers in the process – a win-win situation. In fact, some research has shown that these types of loans are safe for consumers and prevent them from resorting to payday loans. It is likely that a 5 percent payment-to-income ratio is suitable from the borrower's perspective and is a financially viable product for lenders. Overall, the 5 percent payment to income alternative approach to regulating payday lending could turn out to be better option for all lenders than what is currently proposed by the Bureau and such a regulatory scheme should be thoroughly studied and considered.

This approach, at first glance, could provide significant advantages compared to a mandated ability-to-repay process, including: (1) potential for automation, simplicity, and prescreening may provide a better consumer experience; (2) minimal cost of origination, enabling profitability for providers at a fair price for consumers; and (3) clear guidance to reduce regulatory risk. The 5 percent payment-to-income alternative increases the likelihood that credit unions will enter this market, thereby increasing consumer access to credit.

Accordingly, loans made under a 5 percent payment alternative could be entirely exempt from the mandated ability-to-repay process outlined in the proposed rule. Credit unions are responsible lenders that constantly look out for the best interests of their members. A credit union choosing to establish policies and procedures under a 5 percent PTI approach would do so in order to ensure that members have access to financial products that work for them while also maintaining appropriate default rates, and only originating loans in a manner that is consistent with effective underwriting. Meanwhile, predatory payday lenders are characterized by high prices, reliance on ability to collect rather than ability to repay, and lack of reporting loan repayment to credit bureaus is harmful to consumers. These predatory actors are also increasingly becoming installment lenders, offering triple-digit APRs with finance charges that frequently exceed the amount of credit extended. Unsurprisingly, the Bureau has found that there is a correlation between payment-to-income ratio and levels of default.[48]

As discussed previously, the Bureau has declined to adopt a safe harbor PTI ratio for underwriting purposes because research cannot discern a clear inflection point "below which payment-to-income ratio leads to positive outcomes for consumers."[49] However, an alternative study cited in the Bureau's Supplemental Report concluded that "loan sequences that meet a payment-to-income limit of 5 percent will have a loan sequence payoff rate of 65 percent, about eleven percentage points higher than the benchmark payoff rate of 54 percent for all loan sequences [single-loan and multiple] for which payment-to-income ratio was available."[50] NAFCU urges the Bureau to clarify what an acceptable positive outcome would look like for consumers in terms of payoff rate. In the meantime, the CFPB should consider and thoroughly study the 5 percent PTI approach offered as an alternative to its current overly-complex regulatory scheme.

Conclusion

NAFCU and our members believe that exempting credit unions from rulemakings intended for unscrupulous actors would result in significant, immediate regulatory relief that would allow credit unions to better serve their members. To date, however, the Bureau has not used its

[48] *See* Proposed Rule *supra* note 2, at 48040.
[49] *See* Proposed Rule *supra* note 2, at 48040.
[50] Howard Beales & Anand M. Goel, *Small-Dollar Installment Loans: An Empirical Analysis*, 46 (Mar. 20, 2015).

exemption authority to support or acknowledge the consumer-friendly mission of credit unions. The relationship between the credit union and its member is based on fairness and responsible practices. Therefore, subjecting credit unions to rules aimed at bad actors only results in encumbering their ability to serve their members.

NAFCU would also like to remind the Bureau that the specific comments and suggestions offered throughout this letter represent alternative approaches in lieu of a categorical exemption for credit unions. NAFCU and our members believe that these recommendations would help ameliorate many of the problems associated with the proposed rule, but would not completely mitigate their detrimental impact. In general, the Bureau's proposal would severely restrict access to credit for financially distressed borrowers who cannot wait during an emergency for a lender to wade through numerous pieces of verification evidence. Members rely on their credit unions to provide loans on friendly and understandable terms—yet the Bureau suggests otherwise, despite its extraordinarily limited evidence and almost non-existent complaint data. The Bureau's decision to recast many types of loans as payday products and impose an unreasonably low default rate for its portfolio exemption suggests that the Bureau has not given serious thought to how credit unions accommodate their members, even when it is unprofitable to do so.

NAFCU and our members urge the Bureau to keep in mind its broad legal authority under Section 1022 of the Dodd Frank Act. We also hope to maintain a dialogue with you on this important topic. If you have any questions or need additional information, please feel free to contact me or Andrew Morris, Regulatory Affairs Counsel, at (703)-842-2266, or amorris@nafcu.org.

Sincerely,

B. Dan Berger
President and CEO

October 3, 2016

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Ms. Jackson:

RE: Docket CFPB-2016-0025, RIN 3170-AA40
Payday, Vehicle Title, and Certain High-Cost Installment Loans

I thank you for the opportunity to comment on the important proposed rule the Consumer Financial Protection Bureau (Bureau) has issued to regulate certain types of credit it deems harmful and abusive to consumers. The National Credit Union Administration (NCUA) fully supports the goals of the proposed rule and the federally insured credit union system strives to provide its members with beneficial credit products. However, NCUA strongly recommends that the Bureau include a blanket exemption for payday alternative loans (PALs) made by federal credit unions (FCUs) in accordance with NCUA's Regulations[1] from coverage of any final rule. Further, NCUA requests adjustments related to other exemptions discussed in connection with the proposed rule. As the prudential regulator for federal credit unions, NCUA already ensures that members receive the type of protections the Bureau is seeking to address.

NCUA, an independent federal agency within the Executive Branch, is the chartering authority for FCUs and provides federal account insurance to all FCUs as well as to state-chartered credit unions by application. As such, NCUA is the federal regulator for approximately 5,887 federally insured credit unions. NCUA works to ensure safety and soundness as well as compliance with applicable federal regulations in the credit union system.

Credit unions are not-for-profit, member-owned, democratically controlled cooperative financial institutions formed to permit groups of people to save, borrow, and obtain financial services. These characteristics make credit unions unique among financial institutions. Given this fact, NCUA has a particular interest in ensuring that members receive strong consumer financial protections while retaining access to affordable financial services.

The Federal Credit Union Act (FCU Act) and its implementing regulations contain protections that apply to all FCUs. For example, all credit extended by FCUs is subject to a rate cap of 18 percent (or 28 percent for PALs) and FCUs are prohibited from charging a penalty to any

[1] 12 C.F.R. § 701.21.

borrower who prepays an extension of credit.[2] Further, the NCUA Board has worked to promote responsible lending practices, in particular by establishing a regulation that permits FCUs to make PALs that are significantly less expensive for consumers than traditional payday loans. NCUA, through its own rulemaking, determined PALs provides credit union members with a safe, more affordable credit product.

We respectfully request the Bureau exempt FCUs completely from its final rule for loans made under and consistent with NCUA's PALs regulation.[3] While the proposed rule included a conditional exemption for PALs compliant loans, it would nevertheless increase compliance burdens for credit unions and potentially divest NCUA of the flexibility to adjust its rule as it sees fit to reflect the unique characteristics of credit unions. As the Bureau itself acknowledges, it "has not observed evidence that lenders making loans under the NCUA [PALs] program participate in widespread questionable payment practices." The Bureau should therefore defer to determinations of the FCU prudential regulator about this product. NCUA closely supervises FCUs for compliance with the PALs regulation, ensuring credit union members receive comparable protections from predatory credit products the Bureau seeks to provide. NCUA continues to review its existing regulations and may consider enhancements to the PALs regulation. Additional rules from sister agencies will unnecessarily increase compliance burdens.

NCUA further recommends the Bureau consider a full exemption from the final rule for all creditors making fewer than a threshold number of otherwise covered transactions during the preceding year or other specified period (a Small Creditor Exemption). Many small credit unions make short term, small dollar loans to assist their members during unexpected times of need. They provide aid to members, often with the intent to improve a member's financial situation and credit standing. A Small Creditor Exemption would be consistent with the Bureau's goal of consumer financial protection because the predatory payday lending the Bureau's proposed rule is aimed at addressing typically accompanies high loan volume due to extraordinarily high default rates. In the absence of a Small Creditor Exemption, increased compliance burdens may keep small credit unions from extending such beneficial products to their members, which would counter the consumer-directed purpose of the proposed rule.

The Bureau also seeks comment on an exemption – or partial exemption – for loans made in which the total monthly payment does not exceed five percent of the borrower's gross monthly income. The proposed rule does not contain that exemption, although it was discussed as an alternative in the Small Business Review Panel Outline. The Bureau reports that credit unions and banks were generally supportive of an exemption based on a borrower's payment-to-income ratio. NCUA recommends the Bureau reconsider this as an additional exemption in the final rule. As the Bureau acknowledged, the credit unions and community banks that offer such credit do so as an accommodation to members and consumers, often at no or little profit. That credit

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[2] NCUA, Letter to Federal Credit Unions 15-FCU-02 (June 2015), available at https://www.ncua.gov/regulation-supervision/Pages/policy-compliance/communications/letters-to-federal-credit-unions/2015/02.aspx (announcing the extension of the general 18 percent rate ceiling on FCU loans and the 28 percent rate ceiling on PALs through March 10, 2017); 12 CFR 701.21(b)(6) (same). The rate cap for most FCU loans has been set at 18 percent since May 1987. For purposes of the cap, the rate is "inclusive of all finance charges." 12 U.S.C. § 1757(5)(A)(vi).
[3] 12 C.F.R. § 701.21(c)(7)(iii).

can shield consumers from predatory products and sometimes rehabilitate their tarnished credit standing. An additional exemption based on a payment-to-income ratio could benefit consumers who are served by well-intentioned credit unions and similar regulated and supervised institutions.

Several provisions of the proposed rule restrict the use of certain security interest procedures for covered credit. The FCU Act expressly authorizes FCUs "to impress and enforce a lien upon the shares and dividends of any member, to the extent of any loan made to him and any dues or charges payable by him…"[4] NCUA recommends the Bureau clarify in the final rule that it does not intend to narrow or otherwise alter the circumstances in which a credit union can use a Congressionally-authorized statutory lien.

In addition to the conditional PALs exemption in the proposed rule, the Bureau proposes a second exemption from the ability-to-repay (ATR) requirements for longer-term loans. The availability of the second exemption depends partially on whether a creditor has a default rate of not more than five percent in the creditor's portfolio of similar loans. NCUA recommends the Bureau consider a slightly higher default rate. Based on the most recent NCUA Call Report data, the aggregate annualized net charge-off rate as a share of average PALs was 7.63 percent in 2016Q1, up from 5.93 percent in 2015Q1. The equivalent charge-off rates for title lenders and both storefront and online payday lenders, as reported in the proposed rule's Supplementary Information, far exceed those for PALs. NCUA believes raising the rate in the final rule will permit a greater number of credit unions and others to provide beneficial credit to consumers under the second exemption from ATR requirements.

For these reasons, NCUA recommends a blanket exemption for PALs from coverage by the proposed rule, when finalized, and that the Bureau revisit the other aspects of the proposal discussed above, to preserve viable alternatives to predatory payday, title and other installment loans and to recognize NCUA's proactive supervisory role as a prudential regulator.

Thank you for considering these comments. If it would be helpful for Bureau staff to obtain further information regarding these recommendations, please feel free to contact Gail Laster, Director, Office of Consumer Protection, at (703) 518-1140.

Sincerely,

/S/

Rick Metsger
Chairman

OCP/JG

[4] 12 U.S.C. 1757(11).

United States Senate
WASHINGTON, DC 20510

July 18, 2016

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau (CFPB)
1700 G Street, NW
Washington, D.C. 20552

Dear Director Cordray,

In both good economic times and bad, community banks and credit unions serve as pillars of their communities, providing the capital and access to credit that families and small businesses need to grow. That is why Congress and federal regulators have long taken the approach that credit unions and community banks should be treated differently from the largest financial institutions and non-bank lenders. It is our hope that the CFPB also takes this approach and considers the impact of its rule-making on smaller financial institutions and consumers. We request that the CFPB carefully tailor its regulations to match the unique nature of community banks and credit unions.

As it has now been six years since the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), there are many new rules and regulations in place. We must ensure that credit unions and community banks are not unduly burdened by compliance, but rather have the ability to maintain their close relationships and continue to offer a wide variety of consumer financial products and services.

We agree that it is important for consumers to be empowered to take more control over their economic lives, and that bad actors should be rooted out of the financial marketplace. However, the CFPB must also consider its impact on community-based depository lenders, who are essential to spurring economic growth and prosperity at a local level, and not disrupt the good work of community lenders to help someone start a business, buy a home or car, or put their kids through college. Since we all recognize these community lenders were not the primary cause of the financial crisis, the CFPB must carefully tailor its rulemaking.

Dodd-Frank explicitly granted the CFPB the authority to tailor regulations in Section 1022(b)(3)(A) by allowing the CFPB to "exempt any class" of entity from its regulatory requirements. We believe the CFPB has robust tailoring authority and ask that you act accordingly to prevent any unintended consequences that negatively impact community banks and credit unions or unnecessarily limit their ability to serve consumers.

Thank you for your consideration and we look forward to working with you on this important matter.

Sincerely,

Joe Donnelly
Joe Donnelly
United States Senator

Ben Sasse
Ben Sasse
United States Senator

Joe Manchin

Amy Klobuchar

Debbie Stabenow

Claire McCaskill

Gary C. Peters

Tammy Baldwin

Angus King

Heidi Heitkamp

[illegible]

Jon Tester

Mitch McConnell

John Cornyn

John Barrasso

Tom Cotton

Shelley Moore Capito

Richard Shelby

Dan Sullivan

Kelly A. Ayotte

Bill Cassidy, M.D.

Lisa Murkowski

Tom Udall

Bob Casey, Jr.

Mark R Warner

[illegible]

[illegible]

Roy Blunt

John Boozman

Orrin Hatch

Susan M. Collins

Chuck Grassley

[illegible]

Angus King

David Vitter

Ron Johnson

[illegible]

Steve Daines

Dean Heller

Thad Cochran

M. Michael Rounds

Pat Roberts

Jerry Moran	[illegible]
Roger Wicker	Lamar Alexander
[illegible]	Thom Tillis
Mike Crapo	Rand Paul
Joni K Ernst	[illegible]
[illegible]	[illegible]
Pat Toomey	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
Michael B. Enzi	[illegible]

John Hoeven

Jeff Flake

Todd Young

Rob Portman

Deb Fischer

James E Risch

Dan Coats

Jeff Sessions

March 14, 2016

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Director Cordray:

We write to express our concern that the approach taken by the Consumer Financial Protection Bureau (CFPB) – which does not routinely distinguish credit unions and community banks from some of the very large financial institutions and nonbank lenders – may unintentionally burden community based financial institutions and limit the choice and availability of consumer credit.

Credit unions and community banks provide safe and sound lending opportunities for their members and customers. Their focus on local lending and community development and the close-knit relationship they develop with those they serve is essential to preserve. As you consider consumer protection regulations, we urge you to account for the burden associated with compliance, particularly for smaller entities such as credit unions and community banks.

We want consumers to have all the information they need to make the right financial decisions for themselves and their families, and to ensure that bad actors are prevented from taking advantage of consumers. The furtherance of this mission requires CFPB not only to put in place strong consumer protections, but also to evaluate their effect on a complex financial marketplace made up of both very large financial institutions and much smaller entities.

The Government Accountability Office recently released a report on the impact of new regulatory requirements stemming from the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The study found that there are a number of cases where financial services have been limited or discontinued by community based financial institutions due to new requirements. For example, new regulations on remittance transfers, which were imposed on all institutions that make more than one hundred transfers a year, have led to a number of smaller providers limiting or ending this service altogether due to the financial burdens associated with meeting the CFPB's new requirements.

When Congress passed the Dodd-Frank Act, it specifically recognized the need to tailor regulations to fit the diversity of the financial marketplace. Section 1022(b)(3)(a) gives the CFPB the authority to adapt regulations by allowing it to exempt "any class" of entity from its rulemakings. As you undertake rulemakings, we urge you to consider the benefits credit unions and community banks provide and ensure that regulations do not have the unintended consequences of limiting services or increasing costs for credit union members or community bank customers.

Thank you for your consideration. We look forward to working with you on this important matter.

Sincerely,

ADAM B. SCHIFF	STEVE STIVERS
RALPH ABRAHAM, M.D.	ALMA S. ADAMS, Ph.D.
ROBERT ADERHOLT	PETE AGUILAR
RICK ALLEN	JUSTIN AMASH
MARK AMODEI	BRAD ASHFORD
BRIAN BABIN	ANDY BARR
JOE BARTON	KAREN BASS

JOYCE BEATTY

AMI BERA

GUS BILIRAKIS

SANFORD D. BISHOP, JR.

MARSHA BLACKBURN

EARL BLUMENAUER

MIKE BOST

BRENDAN F. BOYLE

DAN BENISHEK, M.D.

DONALD S. BEYER, JR.

MIKE BISHOP

DIANE BLACK

ROD BLUM

SUZANNE BONAMICI

CHARLES W. BOUSTANY JR., MD

KEVIN BRADY

MO BROOKS

SUSAN BROOKS

CORRINE BROWN

JULIA BROWNLEY

LARRY BUCSHON, M.D.

CHERI BUSTOS

G.K. BUTTERFIELD

BRADLEY BYRNE

KEN CALVERT

LOIS CAPPS

TONY CÁRDENAS

ANDRÈ CARSON

EARL L. 'BUDDY' CARTER

KATHY CASTOR

STEVE CHABOT

YVETTE D. CLARKE

EMANUEL CLEAVER II	JAMES E. CLYBURN
MIKE COFFMAN	TOM COLE
CHRIS COLLINS	DOUG COLLINS
BARBARA COMSTOCK	K. MICHAEL CONAWAY
GERALD E. CONNOLLY	PAUL COOK
JIM COOPER	JIM COSTA
RYAN COSTELLO	JOE COURTNEY
KEVIN CRAMER	RICK CRAWFORD

ANDER CRENSHAW

HENRY CUELLAR

CARLOS CURBELO

RODNEY DAVIS

PETER DEFAZIO

SUZAN DELBENE

JEFF DENHAM

CHARLES W. DENT

RON DeSANTIS

MARK DeSAULNIER

SCOTT DesJARLAIS

MARIO DIAZ BALART

ROBERT J. DOLD

DANIEL M. DONOVAN, JR.

SEAN P. DUFFY

JEFF DUNCAN

JOHN J. DUNCAN, JR.

RENEE ELLMERS

TOM EMMER

ANNA G. ESHOO

ELIZABETH ESTY

BLAKE FARENTHOLD

SAM FARR

STEPHEN FINCHER

MICHAEL FITZPATRICK

CHUCK FLEISCHMANN

BILL FLORES

J. RANDY FORBES

JEFF FORTENBERRY

BILL FOSTER

LOIS FRANKEL

TRENT FRANKS

MARCIA L. FUDGE

RUBEN GALLEGO

JOHN GARAMENDI

SCOTT GARRETT

BOB GIBBS

CHRIS GIBSON

BOB GOODLATTE

PAUL GOSAR, D.D.S

TREY GOWDY

KAY GRANGER

GARRET GRAVES

SAM GRAVES

TOM GRAVES

ALAN GRAYSON

GENE GREEN

H. MORGAN GRIFFITH

MICHELLE LUJAN GRISHAM

GLENN GROTHMAN

FRANK GUINTA

BRETT GUTHRIE

JANICE HAHN

RICHARD HANNA

CRESENT HARDY

GREGG HARPER

VICKY HARTZLER

ALCEE HASTINGS

JOE HECK

JAIME HERRERA BEUTLER

JODY HICE

BRIAN HIGGINS

FRENCH HILL

JAMES HIMES

RUBÈN HINOJOSA

MIKE HONDA

TIM HUELSKAMP

BILL HUIZENGA

DUNCAN HUNTER

ROBERT HURT

EVAN JENKINS

BILL JOHNSON

GEORGE HOLDING

RICHARD HUDSON

JARED HUFFMAN

RANDY HULTGREN

WILL HURD

STEVE ISRAEL

LYNN JENKINS

HANK JOHNSON

DAVID JOLLY

WALTER B. JONES

JIM JORDAN

DAVID JOYCE

MARCY KAPTUR

(NY24)

JOHN KATKO

MIKE KELLY

ROBIN L. KELLY

TRENT KELLY

DAN KILDEE

DEREK KILMER

RON KIND

PETER KING

STEVE KING

ADAM KINZINGER

ANN KIRKPATRICK

JOHN KLINE

STEVE KNIGHT

ANN McLANE KUSTER

RAÚL R. LABRADOR

DARIN LaHOOD

DOUG LaMALFA

DOUG LAMBORN

LEONARD LANCE

JAMES R. LANGEVIN

RICK LARSEN

ROBERT E. LATTA

BRENDA LAWRENCE

SHEILA JACKSON LEE

SANDER LEVIN

JOHN LEWIS

TED LIEU

DANIEL LIPINSKI

FRANK A. LoBIONDO

DAVE LOEBSACK

BILLY LONG

BARRY LOUDERMILK

MIA LOVE

ALAN LOWENTHAL

NITA M. LOWEY

FRANK LUCAS

BLAINE LUETKEMEYER

BEN R. LUJÁN

CYNTHIA LUMMIS

KENNY MARCHANT

TOM MARINO

THOMAS MASSIE

MICHAEL T. McCAUL

TOM McCLINTOCK

BETTY McCOLLUM

JAMES P. McGOVERN

PATRICK McHENRY

DAVID B. McKINLEY, P.E.

CATHY McMORRIS RODGERS

JERRY McNERNEY

MARTHA McSALLY

MARK MEADOWS

PATRICK MEEHAN

GREGORY MEEKS

GRACE MENG

LUKE MESSER

JOHN L. MICA

CANDICE S. MILLER

JEFF MILLER

JOHN MOOLENAAR

ALEX X. MOONEY

SETH MOULTON

MARKWAYNE MULLIN

MICK MULVANEY

PATRICK E. MURPHY

TIM MURPHY

GRACE F. NAPOLITANO

RANDY NEUGEBAUER

DAN NEWHOUSE

KRISTI NOEM

RICHARD M. NOLAN

DONALD NORCROSS

ELEANOR HOLMES NORTON

RICH NUGENT

DEVIN NUNES

STEVEN PALAZZO

GARY PALMER

BILL PASCRELL, JR

ERIK PAULSEN

STEVE PEARCE

SCOTT H. PETERS

COLLIN PETERSON

CHELLIE PINGREE

ROBERT PITTENGER

STACEY PLASKETT

MARK POCAN

BRUCE POLIQUIN

JARED POLIS

MIKE POMPEO

BILL POSEY

DAVID PRICE

TOM PRICE, M.D.

MIKE QUIGLEY

AUMUA AMATA RADEWAGEN

JOHN RATCLIFFE

TOM REED

DAVE REICHERT

JIM RENACCI

REID RIBBLE

KATHLEEN M. RICE

TOM RICE

CEDRIC RICHMOND

DAVID 'PHIL' ROE, M.D.

MIKE ROGERS

TODD ROKITA

TOM ROONEY

PETER ROSKAM

ILEANA ROS-LEHTINEN

DENNIS A. ROSS

KEITH ROTHFUS

DAVID ROUZER

ED ROYCE

RAUL RUIZ

BOBBY RUSH

STEVE RUSSELL

TIM RYAN

MATT SALMON

LINDA T. SÁNCHEZ

MARK SANFORD

STEVE SCALISE

KURT SCHRADER

DAVID SCHWEIKERT

AUSTIN SCOTT

DAVID SCOTT

JAMES SENSENBRENNER, JR.

PETE SESSIONS

TERRI SEWELL

BRAD SHERMAN

JOHN SHIMKUS

BILL SHUSTER

MIKE SIMPSON

ADRIAN SMITH

JASON SMITH

LAMAR SMITH

JACKIE SPEIER

ELISE STEFANIK

MARLIN STUTZMAN

ERIC SWALWELL

MARK TAKAI

GLENN 'GT' THOMPSON

MIKE THOMPSON

PATRICK J. TIBERI

SCOTT TIPTON

DINA TITUS

PAUL TONKO

NORMA TORRES

DAVE TROTT

NIKI TSONGAS

MICHAEL R. TURNER

FRED UPTON

DAVID G. VALADAO

JUAN VARGAS

MARC VEASEY

FILEMON VELA

ANN WAGNER

TIM WALBERG

GREG WALDEN

MARK WALKER

JACKIE WALORSKI

MIMI WALTERS

TIM WALZ

RANDY WEBER

DANIEL WEBSTER

PETER WELCH

BRAD WENSTRUP

BRUCE WESTERMAN

LYNN WESTMORELAND

ED WHITFIELD

ROGER WILLIAMS

FREDERICA WILSON

JOE WILSON

ROBERT J. WITTMAN

STEVE WOMACK

ROB WOODALL

JOHN YARMUTH

KEVIN YODER

TED S. YOHO, DVM

DAVID YOUNG

DON YOUNG

TODD YOUNG

LEE ZELDIN

RYAN ZINKE