National Association
of Federal Credit Unions
3138 10th Street North
Arlington, VA 22201-2149
NAFCU | Your Direct Connection to Advocacy, Education & Compliance

November 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: Request for Information on Payday Loans, Vehicle Title Loans, Installment Loans, and Open-End Lines of Credit
Docket No. CFPB-2016-0026
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) request for information (RFI) on "Payday Loans, Vehicle Title Loans, Installment Loans, and Open-End Lines of Credit." 81 FR 47781 (July 22, 2016). While NAFCU appreciates the Bureau's efforts to protect consumers from predatory lending practices, we are concerned that the complexity and breadth of the proposed rule will greatly impede consumer access to credit. NAFCU believes that certain aspects of the proposed would erode the authority of the National Credit Union Administration (NCUA), create a confusing system of parallel interest rate ceilings for credit unions, and impose time-consuming barriers for consumers seeking traditional products like auto refinances or signature loans.

In general, NAFCU believes that the proposed rule would necessitate an end for most, if not all, covered loan products at many credit unions. Consequently, some credit union members might turn to predatory online lenders in times of emergency, or when they need liquidity during the proposed rule's mandatory cooling-off period. Given the complexity and lack of safe-harbors for ability-to-repay (ATR) rules, NAFCU reiterates its recommendation 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 meet the needs of financially distressed members when the cost and time associated with originating just one short-term, small-dollar loan skyrockets to satisfy the CFPB's unwieldly underwriting requirements.

General Comments

Credit unions are unique in the financial services industry and are different than any other type of lender. The 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] 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.

Beyond just PAL loans, credit unions of all charter types offer a substantial variety of products, such as signature loans and auto refinances, in order to provide members with as many 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. In some cases, consumers may even turn to offshore payday lenders that are not accountable to any regulator.

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

NAFCU believes that consumers would be better served without 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 reiterates its position that the Bureau use its statutory authority under Section 1022 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act) to exempt credit unions from its payday lending rulemaking.

Payment withdrawal rules that interfere with a credit union's statutory right of offset are unlawful.

NAFCU believes that the Bureau's proposed restrictions relating to payment withdrawals unlawfully interferes with credit unions' right to exercise a statutory lien on member accounts. NAFCU's comments on the proposed rule offer a detailed explanation of why this is the case. In short, the proposed rule would "identify as an abusive and unfair practice" 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.[3] 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."[4]

[2] Payday, Vehicle Title, and Certain High-Cost Installment Loans, 81 Fed. Reg. 47864, 47899 (July 22, 2016) (hereinafter Proposed Rule).
[3] 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.
[4] 12 U.S.C. §1757(11) (emphasis added).

A credit union's right to enforce a statutory lien is not a matter of consumer protection; rather, the right falls within the domain of prudential regulation. Consequently, the Bureau's attempt to modify this right goes beyond its rulemaking authority under the Dodd-Frank Act. Rick Metsger, Chairman of NCUA Board, recently wrote to the Bureau discussing his concern with this provision of the proposed rule:

> "The FCU Act expressly authorizes FCUs "to impress and enforce a lien upon theshares 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."[5]

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."[6] 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.

The proposal should exempt feeless payment withdrawal attempts from the definition of a leveraged payment mechanism.

The proposal and accompanying RFI suggest that one of the Bureau's primary concerns regarding the use of leveraged payment mechanisms is the potential for the consumer to incur fees after unsuccessful withdrawal attempts. NAFCU believes that a distinction exists between withdrawal attempts that incur fees and those that do not, and urges the Bureau to exempt feeless payment transfer mechanisms from the definition of a leveraged payment mechanism contained in proposed Section 1041.3(c).

Specifically, the Bureau should consider an exception for depositary 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 unfair and abusive practices. The harm associated with

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[5] 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.
[6] 12 U.S.C. 5517(r) (2006).

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.

The Bureau should increase the portfolio default rate threshold to realistically account for the inherent risk associated with lending to financially distressed consumers.

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."[7] However, including these loans within the scope of the 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.

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.

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

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[7] Proposed Rule *supra* note 2, at 48039.

higher default rates. However, higher default rates do not necessarily indicate that a loan is per se usurious. 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.[8] 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 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 on 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."[9] Such a finding should, if anything, support the notion that credit unions do not need additional supervision or costly new

[8] NCUA, Call Report Quarterly Data (June 2016), *available at* https://www.ncua.gov/analysis/Pages/call-report-data/quarterly-data.aspx.
[9] Proposed Rule *supra* note 2, at 47891.

underwriting standards. Accordingly, the Bureau should consider exempting credit unions from all proposed longer-term loan rules.

The Bureau should consult with the NCUA before establishing any interest rate ceiling threshold for longer-term, covered loan.

The Bureau's total cost of credit definition would directly conflict with NCUA's interpretation of the applicability of Regulation Z to FCUs' general interest rate ceiling. NAFCU's comments on the proposal explained how the total cost of credit model for would yield substantial confusion as credit unions attempt to comply with two distinct standards for determining the APR on a loan.

Part of the complexity is attributable to NCUA policy. NCUA's guidance regarding the use of Regulation Z to determine what types of fees are factored into the general interest rate ceiling *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." [10]

The Bureau's decision to promulgate a total cost of credit model for determining the applicable interest rate ceiling for longer-term loans undermines the scope and extent of NCUA's authority. Furthermore, the proposed 36% "all-in" interest rate would practically operate as a de-facto usury cap for many credit unions given the cost and inherent uncertainty associated with determining ATR. Accordingly, the Bureau should defer to NCUA's expertise and not seek to supersede its authority to determine the applicable interest rate ceiling for member loans. 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.

The Bureau should exclude from its definition of the total cost of credit discrete, ancillary products freely chosen by consumers.

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. Many credit unions offer affordable ancillary products in connection with auto refinances, such as credit insurance. A side-effect of the rule's complexity could be a reduction in credit-related products or services, and the consumer having less flexibility when seeking certain credit protection features. By including ancillary products in the calculation of the total cost of credit, many types of low

[10] 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).

interest loans offered by credit unions would exceed the 36% APR and likely be discontinued. Low interest auto refinances with credit insurance features are popular with younger credit union members, but the proposed rule would significantly impact the availability of these loans if costly ATR requirements were to apply.

The United States Government Accountability Office (GAO) has studied the benefits of debt protection programs offered on credit cards by large banks. In a report published March 2011, the GAO concluded that debt protection products generally give consumers peace of mind and rarely give rise to complaints.[11] GAO also concluded that "credit unions charged significantly lower fees than banks for these products."[12] The GAO report explained that credit unions' not-for-profit pricing structures were one reason that these fees were generally lower than those charged by banks.

An appropriate definition of APR should generally exclude the cost of discrete, ancillary 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."[13]

The Bureau should exempt auto refinances from covered vehicle title loans.

Proposed Section 1041.3(b)(2)(ii) would place title-secured auto refinances exceeding a 36% APR within the scope of covered, longer-term loans. NAFCU believes that subjecting auto refinances secured by a vehicle title to ATR requirements would cause harm to consumers who need access to more affordable repayment options. In fact, most unsecured refinances are not popular with consumers and often more expensive than cash-out refinances due to higher interest rates. More troubling, however, is the Bureau's lack of specific data to support its broad assumption that credit unions offer auto refinances without considering a customer's ability to repay.[14]

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[11] United States Government Accountability Office, Report to Congressional Committees, Consumer Costs for Debt Protection Products Can Be Substantially Relative to Benefits but Are Not a Focus of Regulatory Oversight, GAO-11-311, March 2011, at 24. The GAO concluded that "[f]ederal agencies have received relatively few complaints related to debt protection products." Data from 2009 indicated that only one complaint was made for every 100,000 debt protection products. *Id*. at 25.
[12] *Id*. At 28.
[13] 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).
[14] 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

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. Consumers may perceive the ATR inquiry as inefficient, particularly when they are 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.

The Bureau should clarify its rationale for exempting pawnbrokers from the proposed rule.

For non-recourse pawn loans, the Bureau has determined that its host of novel underwriting requirements should not apply. Although a pawn loan gives the consumer the option of either repaying the loan or forfeiting the pawned property in order to settle an obligation, NAFCU does not see how this particular feature warrants a total exemption from the rule's covered loan requirements. The exemption is particularly strange given that the Bureau has simultaneously concluded that pawn loans could be used to evade core requirements in the rule, such as the cooling off period for covered loans. Based on the tension that exists between the proposed pawn loan exemption and the accompanying fear that such an exemption might be exploited, NAFCU asks that the Bureau clarify exactly how it calibrates its threshold for consumer harm.

Additionally, to the extent that "the process of surrendering the item may reinforce to the consumer what the consequences will be if the consumer is later unable to repay the pawn loan," NAFCU asks whether the Bureau has research to support this finding or merely speculates that deprivation of collateral (in contrast to a leveraged payment mechanism) accomplishes the same warning function as the numerous disclosures required proposed in Section 1041.15.

Although NAFCU has no opinion on whether a pawn loan exemption should or should not exist, it does wonder under what circumstances the Bureau is willing to tolerate consumer risk by creating a limited exemption. Clarification in this area would better inform all parties about what products or features might warrant less onerous compliance burdens.

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

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("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.").

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.

NAFCU's comments on the proposed PAL "exemption" identified four major changes that would create new burdens never contemplated by NCUA when it originally developed the PAL loan program. These changes would severely impair the success of the PAL program for the following reasons:

1. Credit unions would no longer be assured that they can exercise statutorily granted set-off rights.[15]
2. The minimum term for an exempt, PAL-type loan would increase from 30 days to 46 days, resulting in higher costs to certain consumers. [16]
3. The new exemption would demand additional reporting functionality to determine whether an affiliate has issued a covered loan during the cooling off period.[17]
4. The PAL exemption would still require credit unions to conform with the rule's record retention and compliance program requirements.[18]

NAFCU believes that these costly changes unnecessarily intrude upon the NCUA's authority to prescribe rules for a program that it designed specifically for credit unions. Accordingly, NAFCU asks that the Bureau completely exempt from its proposal all loans made under NCUA's PAL program. NCUA has itself expressed strong reservations about proposed changes to the PAL program, and the Bureau should defer to the NCUA's prudential expertise to determine how the PAL program operates for credit unions. Any attempt to second-guess NCUA on a product it developed would only create confusion and unnecessary tension between the two agencies.

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

[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.

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.

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 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 alternatives 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 at (703)-842-2266, or amorris@nafcu.org.

Sincerely,

Andrew Morris

Andrew Morris
Regulatory Affairs Counsel