

# Bureau of Consumer Financial Protection (Bureau)

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## Issues:

**Implementation of S. 2155:** In light of the recent enactment of the *Economic Growth, Regulatory Relief, and Consumer Protection Act* (S. 2155), NAFCU has encouraged the Bureau to provide the industry with additional clarity regarding compliance impacts on the following issues:

- *Home Mortgage Disclosure Act (HMDA)* – Section 104 exempts certain credit unions that have originated less than 500 closed-end mortgage loans or less than 500 open-end lines of credit in the preceding two years from certain disclosure requirements under HMDA. NAFCU urges the Bureau to amend its definition of a “covered financial institution” and its transactional thresholds under Regulation C to achieve parity with this exemption.
- *Truth in Lending Act (TILA)* – Section 109 amends TILA to provide an exception to the three-day waiting period for disclosures if a creditor extends a second offer with a lower annual percentage rate (APR). NAFCU encourages the Bureau to provide guidance as suggested by Congress in the remainder of Section 109 and to explicitly permit this exception for all mortgage loans under TILA.
- *Ability-to-Repay/Qualified Mortgage (ATR/QM)* – Section 101 codifies a version of the Small Creditor Portfolio QM category to allow credit unions expanded flexibility with respect to making QM loans. NAFCU would like clarity on the type of documentation of “debt, income, and financial resources” a credit union must consider when making a residential mortgage loan to a member.
- *Exploitation of Senior Citizens* – Section 303 protects certain financial institution employees, such as *Bank Secrecy Act* (BSA) officers, from liability for disclosing suspected exploitation of a senior citizen by another individual, such as a caregiver or fiduciary. NAFCU encourages the Bureau to coordinate with the U.S. Department of the Treasury’s Financial Crimes Enforcement Network to detail how this section and any implementing regulations may interact with existing BSA training requirements.

**Consumer Complaint Database:** NAFCU believes that the Bureau should not publish consumer complaint narratives on its website, or in any other format. There is no shortage of alternative channels through which consumers can comment on or critique the conduct of financial institutions. A recent comment made by Acting Director Mulvaney analogizing the Consumer Complaint Database (Database) as “Yelp for financial services sponsored by the federal government” emphasizes this fact and highlights the degree of subjectivity which permeates the Database. Credit unions already have internal policies and procedures in place to achieve complaint resolution, along with supervisory committees that provide independent and impartial investigations into member complaints. NAFCU recommends that the Bureau encourage consumers to first contact their financial institution directly before submitting a complaint. A direct line of communication with the financial institution offers the best method for achieving efficient complaint resolution.

**Payday Lending Rule:** In light of the National Credit Union Administration’s (NCUA) recently proposed rule regarding its payday alternative loan (PAL) program, NAFCU submitted a letter to Bureau Acting Director Mick Mulvaney recommending the exclusion of all NCUA PAL loans from the Bureau’s payday lending rule. NAFCU maintains that credit unions should never have been included in the Bureau’s payday lending rule because they do not engage in harmful lending practices like the bad actors the rule is intended to target.

**Small Business Data Collection:** On May 10, 2017, the Bureau published a request for information (RFI) on small business lending and a related whitepaper. The RFI is the Bureau’s first step toward implementing Section 1071 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act), which requires financial institutions to collect and report small business loan information, akin to HMDA reporting. Shortly before the RFI was published, NAFCU submitted a letter advising the Bureau that Section 1071 data

collection would not be suitable for credit unions given the difficulty of comparing member business lending across distinct fields of membership. NAFCU maintains the position that credit unions should be exempt from any small business loan data collection. NAFCU has offered recommendations to the Bureau during its rule development process and has attended several meetings with staff in charge of this effort.

**Supervision and Enforcement Authority:** NAFCU believes that there is ample legal authority to exempt credit unions from the Bureau's supervisory and enforcement jurisdiction—either by practical delegation of such functions to the NCUA or by exercise of the Bureau's exemption authority under section 1022 of the Dodd-Frank Act. As member-owned and democratically controlled institutions, credit unions have consistently demonstrated that they present minimal consumer risks. Credit unions are connected to their communities in ways that large, national banks are not and, as a result, are directly invested in their members' financial well-being. Furthermore, the Bureau's former director—along with its legislative architect—have, on various occasions, publicly stated that if all lenders had behaved the way credit unions had, there likely would not have been a financial crisis. Furthermore, Chairman Mark McWatters supports transferring enforcement and examination authority to the NCUA. NAFCU continues to advocate for a broad exemption from the Bureau's supervision and enforcement authority, and also for the Bureau to utilize its powers under Section 1022 to grant targeted relief to credit unions in connection with specific rulemakings.

**Unfair, Deceptive, or Abusive Acts or Practices (UDAAP):** The Dodd-Frank Act vests the Bureau with the authority to prevent unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. NAFCU believes the Bureau's exercise of its UDAAP authority to establish regulatory expectations on a case-by-case basis has created uncertainty and injected unnecessary subjectivity into supervisory standards. NAFCU has recommended that the Bureau provide clearly articulated rules for the types of acts and practices that constitute a UDAAP. In addition, we have asked that the Bureau provide clear rules for the industry after an enforcement action is resolved, so that the specific acts or practices at issue are memorialized for compliance purposes.