3138 10th Street North
Arlington, VA 22201-2149
703.842.2215 | 800.336.4644
f: 703.522.2734
dberger@nafcu.org | nafcu.org

B. Dan Berger
President & Chief Executive Officer

National Association of Federally-Insured Credit Unions

June 14, 2018

The Honorable Mick Mulvaney
Acting Director
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552

RE: Regulatory Changes In Light of S. 2155

Dear Acting Director Mulvaney:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I would like to share with you a list of recommended regulatory action the Bureau of Consumer Financial Protection (Bureau) should pursue in light of the enactment of the *Economic Growth, Regulatory Relief, and Consumer Protection Act* (S. 2155 or the Act). NAFCU and its member credit unions encourage the Bureau to promptly provide the financial services industry with additional clarity and certainty regarding the compliance impact of S. 2155's provisions. The Act's most significant changes concern the *Truth in Lending Act* (TILA), the *Home Mortgage Disclosure Act* (HMDA), and the *Fair Credit Reporting Act* (FCRA), among others, as detailed in the section-by-section analysis below. As the Bureau crafts its interpretation of the Act's provisions, it should ensure that any new conforming regulations account for the unique nature of credit unions and do not impose undue burden on the industry.

Section 101 – Minimum Standards for Residential Mortgage Loans

In 2013, the Bureau of Consumer Financial Protection amended Regulation Z to adopt a rule that implemented the Ability-to-Repay/Qualified Mortgage (ATR/QM) provisions of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act) and established several additional categories of QMs, including the Small Creditor Portfolio QM. For mortgages that meet the criteria to qualify under this category, the Small Creditor Portfolio QM establishes a presumption of compliance with the ATR requirements and provides less strict underwriting requirements in order to reduce regulatory burden on small lenders. Section 101 of the Act codifies a version of the Small Creditor Portfolio QM category to allow credit unions expanded flexibility with respect to making QM loans.

More specifically, Section 101 of the Act amends Section 129C(b)(2) of TILA, as implemented by Regulation Z, to add a section providing that mortgages originated and retained in portfolio by insured credit unions with less than $10 billion in assets will be deemed QMs. *See* 15 U.S.C. § 1639c(b)(2). S. 2155's new safe harbor requires that such a QM: (1) is originated and held in

portfolio for the life of the loan (with some exceptions); (2) complies with existing provisions in the ATR/QM rule regarding prepayment penalties; (3) meets the 3 percent points and fees limitation; and (4) does not have negative amortization or interest-only features. For this safe harbor to apply, the credit union must also have considered and documented the debt, income, and financial resources of the member. This section also notes that compliance with Appendix Q of Regulation Z may not be required and "multiple methods of documentation" shall be permitted.

NAFCU urges the Bureau to quickly provide guidance to credit unions that further expands upon the qualifications for this QM category. In particular, the Bureau should detail the type of documentation of "debt, income, and financial resources" a credit union must consider when making a residential mortgage loan to a member. It is unclear whether this provision refers to the debt-to-income (DTI) requirements in Regulation Z or establishes a new standard. Additionally, this section's reference to the applicability of Appendix Q creates further confusion. Congress's vague reference to "multiple methods of documentation" certainly prompts the Bureau to define exactly what these multiple methods may be. NAFCU supports increased flexibility in the calculation of DTI and ATR and recommends the Bureau issue regulations that provide credit unions with enhanced opportunity to extend credit to those consumers who need it the most.

Section 104 – Home Mortgage Disclosure Act Adjustment and Study

Section 104 of the Act provides regulatory relief to small depository institutions that have originated less than 500 closed-end mortgage loans or less than 500 open-end lines of credit in each of the two preceding calendar years by exempting them from certain disclosure requirements under HMDA, as implemented by Regulation C. More specifically, credit unions that qualify for the exemption are not required to report the items contained in 12 U.S.C §§ 2803(b)(5) and (b)(6), which include certain HMDA data points that were added by Section 1094 of the Dodd-Frank Act. Other reportable items listed in 12 U.S.C § 2803(b)—the HMDA data that was required prior to January 1, 2018—may still be reportable if a credit union is a financial institution as defined in 12 CFR § 1003.2(g). Consequently, Section 104 of the Act does not provide an exemption for all HMDA reporting, and only excludes certain reportable items added by the Dodd-Frank Act.

NAFCU asks that the Bureau amend its transactional thresholds under Regulation C to achieve parity with the exemption contained in Section 104 of the Act. It is essential that credit unions that do not originate a significant number of closed-end mortgage loans or open-end lines of credit receive comprehensive relief from HMDA requirements. Furthermore, NAFCU believes that such relief would reduce the operational complexity that may arise when a credit union is subject to both statutory and regulatory HMDA exemptions—which are similar but not equal in scope. For example, a credit union that is a financial institution but does not originate 500 closed-end mortgage loans or 500 open-end lines of credit would not need to follow "the requirements of paragraphs (5) and (6)" of 12 U.S.C. 2803(b); however, if it originates more than 25 closed-end mortgage loans, it would be required to report the non-excluded items in § 2803(b). Credit unions may face technical challenges when selectively reporting HMDA data. Furthermore, parallel regulatory and statutory exemptions may create confusion and incur

additional reporting costs if the Bureau is not prepared to accept limited HMDA submissions. To mitigate technical complexity and ensure that credit unions are not subject to unreasonable or unnecessary costs, NAFCU asks that the Bureau swiftly amend its definition of a financial institution to achieve parity with the 500 closed-end and 500 open-end threshold envisioned by Section 104 of the Act.

Section 108 – Escrow Requirements Relating to Certain Consumer Credit Transactions

This section amends Section 129D of TILA to exempt qualifying small credit unions from the escrow requirements contained in subsection (a). As amended, 15 U.S.C. Section 1639d(c)(2) provides that loans made by an insured credit union which are secured by a first lien on a principal dwelling are exempt from the requirement in 1639(d)(a) if the following conditions are met: (1) the credit union has assets of $10 billion or less; (2) during the preceding calendar year the credit union originated 1,000 or fewer loans secured by a first lien on a principal dwelling; and (3) the transaction satisfies the criteria in Sections 1026.35(b)(2)(iii)(A), 1026.35(b)(2)(iii)(D), and 1026.35(b)(2)(v) of Regulation Z. The Bureau should work quickly to provide additional information on the exemption requirements outlined above, specifically regarding the interaction with specific sections of Regulation Z.

Section 109 – No Wait for Lower Mortgage Rates

Section 109 adds a new subsection to Section 129(b) of TILA (15 U.S.C. § 1639(b)) to provide an exception to the required three-day waiting period for disclosures if a creditor extends a second offer with a lower annual percentage rate (APR). In this section of the Act, Congress presumably intended to amend TILA to eliminate the Bureau's TILA-*Real Estate Settlement Procedures Act* (RESPA) Integrated Disclosure (TRID) Rule three business-day waiting period for closing a mortgage loan when the APR has decreased by more than the applicable tolerance after issuance of the initial Closing Disclosure. In the TRID final rule, the Bureau cites 15 U.S.C. 1638(b)(2)(B)(ii) and (b)(2)(D) of TILA as the sections that control when a creditor must provide Closing Disclosures before consummation. Unfortunately, in S. 2155, Congress does not reference the correct section of TILA, but actually amends 15 U.S.C. § 1639(b), which only applies to the waiting period requirements for high-cost mortgage loans, as amended by the *Home Ownership and Equity Protection Act* (HOEPA).

This inconsistency is already creating immense confusion across the credit union industry. NAFCU urges the Bureau to provide a clarification regarding this section so that the exception applies to all residential mortgage loans, as Congress likely intended. If such action exceeds the Bureau's authority, NAFCU encourages the Bureau to support a legislative fix for this portion of the Act. Additionally, NAFCU implores the Bureau to provide clearer, authoritative guidance on those issues pointed out by Congress in the remainder of Section 109, including: (1) the applicability of the TRID Rule to mortgage assumption transactions; (2) the applicability of the TRID Rule to construction-to-permanent home loans, and the conditions under which these loans can be properly originated; and (3) the extent to which lenders can rely on model disclosures published by the Bureau without liability if recent changes to regulations are not reflected in the sample TRID Rule forms published by the Bureau. Although this section does not direct the

Bureau and only provides the Bureau "should endeavor" to issue such guidance, NAFCU urges the Bureau to act swiftly to pursue further rulemaking or release additional guidance on these issues.

Section 301 – Protecting Consumers' Credit

Section 301 amends the FCRA (15 U.S.C. Section 1681) to require credit reporting agencies (CRAs) to provide fraud alerts for consumer files for at least one year when a consumer notifies a CRA that he or she has been or may become a victim of fraud or identity theft. This is an increase from the previous rule requiring alerts for only 90 days. Additionally, this section amends the FCRA to provide consumers unlimited free security freezes and removals of security freezes in an effort to prevent fraud and identity theft. Once a security freeze is placed, the consumer will be notified of the right to opt out of personal information being sent to others for marketing purposes. Finally, this section amends the FCRA to provide new protections for the credit reports of minors and individuals who are incapacitated.

NAFCU urges the Bureau to implement conforming rulemaking, as necessary, to amend Regulation V to (1) increase the length of time credit reporting agencies are required to provide fraud alerts to victims of fraud or identity theft; (2) provide victims with unlimited free security freezes; and (3) implement new protections for the credit reports of minors and incapacitated individuals. This section provides essential safeguards in protecting consumers' information. In light of the largest data breaches in history occurring last year that collectively exposed nearly 179 million records, it is imperative that the Bureau act quickly to implement new rulemakings to protect consumers' credit.

Section 302 – Protecting Veterans' Credit

Section 302 amends Section 605(a) of the FCRA to require that certain information related to medical debt incurred by a veteran be excluded from the veteran's credit report for one year after the date the medical service was provided. Additionally, this section includes a provision requiring the removal of information related to medical debt that is characterized as delinquent, charged off, or in collection from a veteran's credit report once the debt is fully paid or settled. This section also mandates the creation of a dispute resolution process for veterans to request the removal of information related to a debt once the veteran notifies and provides documentation to a CRA demonstrating that the U.S. Department of Veterans Affairs (VA) is paying the debt. Lastly, this section amends the FCRA to require CRAs to offer free credit monitoring to active duty military members.

NAFCU urges the Bureau to implement conforming rulemaking, as necessary, to amend Regulation V in the manner explained in this section. The Act specifically charges the Secretary of Veterans Affairs and the Federal Trade Commission (FTC) with promulgating regulations for certain portions of this provision, but because the Bureau has concurrent jurisdiction over implementation of the FCRA, it should coordinate with the VA and FTC to issue a rulemaking, as necessary, to implement these changes. These additional safeguards to veterans and active

military service-members will allow them financial peace of mind and ensure their long-term financial health.

Section 303 – Immunity from Suit for Disclosure of Financial Exploitation of Senior Citizens

This section extends protections to certain individuals who, in good faith and with reasonable care, disclose the suspected exploitation of a senior citizen to a regulatory or law-enforcement agency. Section 303 protects certain financial institution employees, such as *Bank Secrecy Act* (BSA) officers, from liability for disclosing suspected exploitation of a senior citizen (not younger than 65 years of age) by another individual, such as a caregiver or fiduciary. Section 303(b) specifies that financial institutions or a third party selected by a covered financial institution may provide the training to individuals specified in this section, such as credit union employees. This section also describes the content and timing of the training as well as the maintenance of records to document the completion of training. Section 303(c) also specifies that no provision shall be "construed to preempt or limit any provision of State law, except only to the extent that subsection (a) provides a greater level of protection against liability to an individual described in subsection (a)(2)(A) or to a covered financial institution described in subsection (a)(2)(B) than is provided under State law."

NAFCU recommends the Bureau provide credit unions with further details on the training criteria necessary to comply with the requirements of Section 303. 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 interact with existing BSA training requirements. Furthermore, the Bureau should interpret and explain the disclosure requirement of this section by providing clear guidelines for the manner in which such disclosures must be made. NAFCU also asks that the Bureau act swiftly to implement any other conforming regulations related to this section as necessary.

Section 307 – Property Assessed Clean Energy Financing

Section 307 of the Act applies certain consumer protections to real property retrofit loans. Specifically, this section amends Section 129C(b)(3) of TILA to require creditors to verify a borrower's ability to repay home improvement loans that are financed through Property Assessed Clean Energy (PACE) programs. Section 307 is not self-implementing and requires the Bureau to "prescribe regulations that carry out the purposes of subsection (a)" of 12 U.S.C. 1639c. Section 1639c(a) contains TILA's ATR requirements. This section also grants the Bureau the authority to collect such information and data that the Bureau determines is necessary to effectuate implementing regulations. Lastly, it directs the Bureau to consult with state and local governments and bond-issuing authorities.

NAFCU asks that the Bureau issue implementing regulations and implementation guidance to ensure that credit unions are adequately informed of regulatory expectations. With respect to any proposed information collection deemed necessary to effectuate implementation, NAFCU urges the Bureau to minimize burdens on credit unions to the maximum extent possible. Credit unions

are already subject to numerous reporting requirements under other Bureau regulations and it would be counterproductive to the purpose of the Act to institute new information collection obligations.

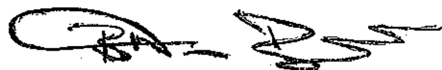
Section 601 – Protections in the Event of Death or Bankruptcy

Section 601 prohibits private student lenders from declaring a default or accelerating a debt against a student borrower on the sole basis of bankruptcy or death of a cosigner, and releases cosigners of private student loans from their obligations following the death of a student borrower. Section 601 amends section 140 of TILA (15 U.S.C. 1650), which includes provisions related to the prevention of unfair and deceptive private educational lending practices. New section 1650(g)(2)(A) would specify that "the holder of a private education loan, when notified of the death of a student obligor, shall release within a reasonable timeframe any cosigner from the obligations of the cosigner under the private education loan." Section 601 does not specify exactly what constitutes a reasonable timeframe. Accordingly, NAFCU urges the Bureau to issue guidance to clarify what constitutes a "reasonable timeframe" under Section 601 (i.e., when a cosigner must be released after a student obligor dies). NAFCU asks that the Bureau issue guidance before Section 601's requirements attach to loan agreements entered on or after November 20, 2018.

Conclusion

Thank you for your consideration and attention to these important matters. We look forward to working with you as you interpret and issue regulations on the provisions outlined above. If you have any questions or would like additional information, please do not hesitate to contact me or NAFCU's Director of Regulatory Affairs, Alexander Monterrubio, at 703-842-2244, or amonterrubio@nafcu.org.

Sincerely,



B. Dan Berger
President and CEO