NAFCU
3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
f: 703.524.1082
nafcu@nafcu.org | nafcu.org
National Association of Federally-Insured Credit Unions

June 19, 2018

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

RE: Request for Information Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities
(Docket No. CFPB-2018-0011)

Dear Ms. Jackson:

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 am writing in response to the Bureau of Consumer Financial Protection's (Bureau) request for information regarding its adopted regulations. NAFCU members appreciate the Bureau's efforts to address regulatory burdens. Credit unions are in a unique position as not-for-profit, member owned cooperatives that focus on providing exceptional member service while maintaining consumer protections.

General Comments

Since the enactment of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank) and the creation of the Bureau, 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 equates to one credit union per day closing its doors. A large majority of those credit unions simply could not afford the cost of complying with the tidal wave of rules promulgated by the Bureau and other federal regulators. Credit unions were not the "bad actors" that led to the enactment of Dodd-Frank, yet they are an industry that has felt the effects the hardest, incurring additional costs and burdens to ensure compliance.

The adopted regulations include rulemakings adopted under Federal consumer financial law, as well as those laws that were adopted pursuant to specific requests by Congress. NAFCU has previously commented on these adopted regulations and urges the Bureau to look at the impacts these regulations have on credit unions. NAFCU specifically urges the Bureau to review and eliminate outdated requirements, and those that are unduly burdensome. Lastly, NAFCU suggests that the Bureau use its broad exemption authority in section 1022(b) of Dodd-Frank, which allows the Bureau to grant exemptions on a rule by rule basis, to exclude credit unions from certain rules. These adopted regulations were intended for larger financial institutions, and exempting credit unions from these regulations would provide significant regulatory relief.

Qualified Mortgages

The Bureau should include GSE loans as a permanent category under the qualified mortgage safe harbor exemption, and revise the definition regarding the debt-to-income threshold.

Many of NAFCU's members have decided to extend only those mortgages that meet the definition of the safe harbor "qualified mortgage" (QM) as they are concerned that they will not be able to sell non-QMs and are worried about the legal and regulatory risks associated with extending non-QMs. Due to the hesitance of lenders to extend non-QMs, NAFCU is concerned that many otherwise qualified borrowers are not able to obtain mortgages. This impedes the critical role that credit unions play in helping consumers achieve homeownership.

Given the recent changes to Dodd-Frank, credit unions are provided some relief with the additional safe harbor category. However, NAFCU suggests that the Bureau reconsider the expiration of the temporary government sponsored enterprise (GSE) QM category, and make this category a permanent safe harbor exemption. Effective housing finance reform preserves a government guarantee, maintains unfettered access to the secondary market and ensures fair pricing for credit unions based on loan quality, not volume. NAFCU members are actively involved in the secondary market. According to NAFCU's February 2018 Economic Monitor, 35 percent of members are selling to Fannie Mae, 12 percent to Freddie Mac, and 12 percent to both GSE's.[1] Further, 39 percent of NAFCU members sell mortgages to the Federal Home Loan Banks, 11 percent use credit union service organizations (CUSOs) or mortgage wholesalers, and 6 percent use Ginnie Mae or private placement.[2]

Further, the definition of QM should be revised regarding the debt-to-income (DTI) threshold (currently 43% of the total loan) and the inclusion of affiliate fees in the calculation of points and fees. NAFCU suggests that the Bureau adopt the GSE equivalent DTI threshold. Raising the DTI threshold will allow credit unions greater flexibility to serve low- to moderate-income consumers. In addition, NAFCU suggests excluding the following items from the general 3 percent cap on points and fees: 1) payments to employee loan originators and mortgage brokers involved in the transaction; 2) affiliate title charges; 3) escrow charges for taxes and insurance; 4) lender-paid compensation to a corresponding bank, credit union or mortgage brokerage firm; and 5) loan level price adjustments.

These revisions are important to ensure credit unions' ability to provide loans and services to their members is not compromised and their access to the secondary mortgage market is not diminished. Therefore, NAFCU suggests that the Bureau adopt GSE loans as a permanent category under the qualified mortgage safe harbor exemption as well as revise the definition in regards to the DTI threshold and the inclusion of affiliate fees in the calculation of points and fees.

[1] *See* NAFCU's February 2018 *Economic & CU Monitor Survey*
[2] *Id.*

<u>Integrated Mortgage Disclosures</u>

The Bureau should clarify disclosure rules to ensure accurate information is provided to consumers.

There have been several recent changes to the *Truth in Lending Act* (TILA) and *Real Estate Settlement Procedures Act* (RESPA) Integrated Disclosure (TRID) rules. NAFCU supported the Bureau's recent amendments to the TRID "black hole" to improve borrowers' understanding of transactions. Dodd-Frank granted the Bureau broad authority to prescribe rules regarding the disclosure of consumer financial products and services. Therefore, NAFCU recommends that the Bureau use this broad authority to continue to make changes to the mortgage disclosure rules to align with the Bureau's ultimate goal of promoting full, accurate, and effective disclosure in a manner that is easy to understand. In addition, pursuant to the *Economic Growth, Regulatory Relief and Consumer Protection Act* (S.2155), NAFCU requests that the Bureau work quickly to provide the credit union industry with additional guidance on TRID to align with Congress's suggestion to the Bureau.

<u>Mortgage Servicing</u>

NAFCU supported the Bureau's mortgage servicing amendment replacing the single-billing-cycle exemption with a single-statement exemption; however, the final TILA-RESPA mortgage servicing rules still have unnecessarily complicated mortgage servicing, increased costs, and jeopardized credit unions' established practices that center on relationships with members. In addition, the final rule fails to address previously raised industry concerns. NAFCU urges the Bureau to extend the existing small servicer exemption to exclude the successors in interest and force-placed hazard insurance requirements. Alternatively, NAFCU recommends the Bureau redraft the model forms if the exemption is not extended for force-placed hazard insurance.

The Bureau should expand the small servicer exemption to exclude successors in interest and force-placed hazard insurance requirements.

Although the Bureau's final rule exempts credit unions that service 5,000 or fewer mortgages, along with affiliates, from some of the servicing requirements, NAFCU recommends that the Bureau expand the small servicer exemption to grant additional relief to credit unions. Small servicers must still adhere to the rules for successors in interest and force-placed insurance, imposing an increased compliance burden on credit unions whose compliance resources are already strained. Accordingly, NAFCU suggests an expansion of the small servicer exemption.

If the Bureau does not extend the small servicer exemption to force-placed hazard insurance, then the Bureau should redraft the model forms.

NAFCU recognizes the Bureau's 2016 efforts, including the additional disclosure option when explaining the reason for the force-placed hazard insurance, as well as the additional model form, and correction of discrepancies between the model forms and the text of Regulation X. Despite these efforts, additional redrafting is necessary to ensure consumers are provided with transparent and consumer-friendly information. NAFCU members craft comprehensive communications that are easy for consumers to understand, and recognize the importance of informing consumers of potential force-placed hazard insurance implications.

Unfortunately, the RESPA requirements call for language that many credit union members view as confusing and not member friendly. Although RESPA allows mortgage servicers some latitude in terms of how to present the information on the notices, there are explicit requirements regarding the substantive information that a mortgage servicer must provide regarding force-placed hazard insurance. RESPA provides model forms as templates and, when used properly, these model forms serve as a compliance safe harbor; however, these model forms have caused consumer confusion. In light of complaints NAFCU members have received, NAFCU requests that the Bureau redraft the model forms contained in Appendix MS-3 to make them more consumer-friendly and easier to understand.

For example, NAFCU suggests that the language regarding hazard insurance in Model Form MS-3(A) be redrafted to request specific information from borrowers on insurance already obtained on the real property, and disclose to the borrower that this information is critical so that the creditor does not obtain unnecessary insurance coverage or charge the borrower for any differences in coverage, versus the broad language which currently states, "You should immediately provide us with your insurance information." This language is confusing and borrowers may not realize that it encompasses all insurance policies obtained, including hazard insurance.

Although servicers have the power to make stylistic changes to the force-placed insurance notices required by RESPA, many credit unions are hesitant to make changes to the model forms or develop proprietary forms for fear of losing the safe harbor protections. Consequently, NAFCU again reiterates its request to the Bureau to consider redrafting the model forms to be more consumer-friendly, and expand the safe harbor protections to include notices that contain substantive changes to the model forms.

The Bureau should increase the grace period for servicers to halt foreclosure proceedings when loss mitigation applications have been filed.

Credit unions have had the chance to operationalize the various loss mitigation requirements under RESPA and ensure they are properly harmonized with individual state foreclosure processes. Accordingly, NAFCU urges the Bureau to continue to provide guidance and clarity for mortgage servicers, in particular, with respect to portions of the RESPA requirements that place restrictions on “dual tracking.”[3]

Credit unions are able to follow the spirit of the particular RESPA sections, but in certain instances, notwithstanding good faith efforts, are unable to meet the strict bounds of the restrictions against “dual tracking.” For example, while coordinating foreclosure efforts with attorneys and other support personnel in various jurisdictions across the country, a credit union must sometimes halt their foreclosure proceedings to process a loss mitigation application and inform its third-party partner(s) in the local jurisdiction. At the same time, it takes the third-party

[3] *See* 12 CFR 1024.41(f)(2) and (g)

partner(s) several days to halt its efforts undertaken on behalf of the credit union. Such third-party delays are especially pronounced in judicial foreclosures states.

Currently, 21 states predominantly use judicial foreclosure procedures. The judicial requirements in these states make it very difficult to stop the foreclosure process immediately, as is required by RESPA. Therefore, while a credit union and its third-party partner(s) are going through the various judicial processes for halting a foreclosure action, the credit union is technically in violation of the restrictions against “dual tracking,” despite having done everything within its power to halt the foreclosure process. NAFCU urges the Bureau to review and revise the “dual tracking” provisions of RESPA to create a safe harbor grace period, during which credit unions can get their third-party partner(s) to halt their foreclosure processes without violating the prohibition against “dual tracking.”

In addition, NAFCU members have reported issues in states where the Bureau's 120-day notice requirement conflicts with states laws relating to when foreclosure could be initiated by a credit union. The Bureau's notice requirement directly conflicts with state law without providing resolution when this situation arises, therefore we suggest the Bureau review the notice requirement and consider alternative options for credit unions when the requirements directly conflict with state law.

If the Bureau made these changes, it would still be able to accomplish the goal of preventing “dual tracking,” while also granting much needed flexibility to servicers who are working in good faith to comply with RESPA's requirements. NAFCU encourages the Bureau to engage in a rulemaking to resolve this issue for the mortgage industry.

Mortgage Origination

The Bureau should revise the broad definition of loan originator.

The Bureau has adopted a broad definition of loan originator to cast a "wide net" in ensuring consistency across persons that may have financial incentives, this effectively subjects anyone who comes in contact with a residential mortgage at a credit union to be labeled as a loan originator.

Credit unions are comprised of credit committees and loan officers that are overseen by their respective boards. The *Federal Credit Union Act* (FCU Act) prohibits financial incentives to loan officers at credit unions unless certain provisions apply. NAFCU remains concerned that this overbroad definition will lead to additional compliance burdens with the need to register employees as loan officers when they should not be registered.

Remittances

The Bureau should exclude credit unions from the remittance transfer rule, or alternatively, increase the number of transfers allowed under the safe harbor exemption.

In 2012, the Bureau issued its final rule on remittance transfers to individuals and businesses in foreign countries and amended the rule several times before the remittance rule became effective on October 28, 2013. The regulatory burden that the rule places on credit unions has led to a significant reduction in consumers' access to remittance transfer services.

NAFCU has heard from a number of our members that they have been forced to discontinue, or will be forced to discontinue their remittance services. According to a NAFCU survey, 18.2 percent of our members that offered remittance services before the rule was promulgated in 2013 have stopped offering these services.[4] Of those members that continued to offer services, 58.8 percent have seen remittance transfers decline significantly or decline somewhat since the remittance rule went into effect.[5] In addition, due to the rule's compliance burdens and increased costs, 55.6 percent of our members reported that the rule made remittance transfer services more expensive and 57.1 percent reported passing these increased costs onto consumers.[6] Credit unions have no control over the foreign wire fees the receiving financial institution will charge, and credit union members feel they are receiving inaccurate information. This downward trend will likely continue due to member dissatisfaction and increased costs associated with the service.

NAFCU members have also indicated that the remittance rule has created increased confusion and frustration. Their members are deeply dissatisfied with the remittance process, particularly with disclosures. NAFCU members are finding that consumers do not have the requisite information to receive a disclosure upon a first visit, or do not want to wait the duration of the verification and review process. The disclosures extend the time required for the entire remittance process, which has affected the consumer experience. Accordingly, NAFCU encourages the Bureau to exclude credit unions from the remittance rule. The rule has created inefficiencies, a lack of transparency, increased compliance burdens and costs, and has caused a significant market disruption.

The definition of "remittance transfer provider" does not include those credit unions that provide 100 or fewer remittance transfers in the previous calendar year, and provide 100 or fewer remittance transfers in the current calendar year. Although NAFCU and our members appreciate the Bureau offering a safe harbor exemption, the Bureau should increase the threshold of transfers allowed under the safe harbor exemption. Increasing the allowable threshold will likely lead to those prudent credit unions, previously not inclined to make remittance transfers or to not make as many remittance transfers, increasing remittance transfer volume.

Prepaid Accounts

The Bureau should rescind the prepaid accounts rule in its entirety, or exclude credit unions from this rule.

On February 13, 2018 the Bureau finalized amendments to the 2016 prepaid accounts final rule. The amendments were intended to reduce compliance costs by providing exemptions for services like digital wallets, permitting more flexible use of electronic disclosures, and applying new exemptions for gift cards under certain conditions. The amendments also included a delayed

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[4] *See* NAFCU's May 2018 *Economic & CU Monitor Survey*
[5] *Id.*
[6] *Id.*

effective date of April 1, 2019. NAFCU has consistently supported providing consumers with helpful information about the products and services they use. Prepaid accounts offered by credit unions are among the most transparent and understandable products available in the financial marketplace.

Yet the rule's array of pre-acquisition disclosures, which incorporate multiple fee schedules and specific methods for determining reportable fees, require credit unions to thoroughly review prepaid account agreements and engage in extensive coordination with program managers for white label products. Many underserved consumers depend on prepaid accounts to avoid the higher costs associated with traditional products or financial services. A highly regulated prepaid account environment could adversely affect these financially vulnerable consumers by forcing credit unions to discontinue prepaid products.

Nevertheless, NAFCU believes the Bureau should rescind the rule entirely as the transition to new disclosures, new systems, and potentially new service agreements will likely result in significant costs and reduce availability of prepaid products. Amendments to error resolution rules, modification to the content and packaging of Regulation E disclosures, and the proposed written authorization requirement for linking credit features are all changes that will necessitate additional costs to credit unions.

Fair Debt Collection Practices Act

The Bureau should exclude credit unions from debt collection rulemakings.

Credit unions are not debt collectors under the *Fair Debt Collection Practices Act* (FDCPA) and should be excluded from any debt collection rulemaking. In the past, the Bureau has failed to account for the unique aspects of credit unions, including the fact that credit unions work with their members to bring delinquent accounts current, the established relationship between credit unions and members, and the procedural rights granted by the FCU Act to both credit unions and their members. Credit unions exist for the primary purpose of serving their members. They work with members to implement payment plans, loss mitigation strategies, waivers of late fees, and other options when a delinquency occurs. The rights under the FCU Act are conferred by Congress and should be carefully considered when any debt collection regulation applicable to credit unions is drafted.

NAFCU understands that the Bureau is attempting to curb abusive and harassing debt collectors, but credit unions do not engage in these types of activities. Additional debt collection rulemakings will force credit unions to devote more time and resources to assisting third party debt collectors. Therefore, NAFCU suggests that credit unions be excluded from any debt collection rulemakings.

Equal Credit Opportunity Act

The Bureau should exclude credit unions from required small business lending data collection.

Although the Bureau stated that no pending rulemakings should be included in comments to the request for information, NAFCU believes that this regulation is problematic and should be included in the Bureau's review.

Section 1071 of Dodd-Frank under the *Equal Credit Opportunity Act* (ECOA) requires credit unions to collect and report certain small business information. Unlike for-profit institutions, credit unions have limited compliance resources and generally require greater flexibility for complying with significant regulations. Credit unions have restrictive field of membership (FOM) classifications. Credit unions are legally barred from lending to any non-member, or person that does not fit within the restrictive FOM classification. Requiring collection of this data will not align with the Bureau's goals, as this data collected will only represent those loans that fall squarely within the FOM classification.

NAFCU suggests that the Bureau exclude credit unions from this rule as the data collection will be skewed and is not indicative of a sample population, and will only add to the compliance burdens of credit unions.

Access to Financial Records

The Bureau should exempt credit unions from any rulemaking regarding access to financial records.

Section 1030 of Dodd-Frank allows the Bureau to implement rules governing consumer access to financial records. Pursuant to Section 1030, consumers are entitled to information about their transactional data. To date, the Bureau has not issued a rulemaking but has issued voluntary guidance on the subject. NAFCU supports the Bureau's efforts to promote consumer access to new technologies and financial services through the cultivation of an innovative and competitive marketplace; however, NAFCU believes that financial aggregators should not be able to take advantage of their status and shift the burden of data collection onto data providers such as credit unions. In addition, the Bureau should narrowly construe a consumer's ability to share information with a third-party in order to protect consumers. Also, NAFCU believes that data security burdens should fall on the record-seeking party and, therefore, recommends the Bureau develop standards for these record-seeking parties to ensure the transfer and retention of consumer financial data is secure.

NAFCU suggests that the Bureau continue to issue guidance, as a rulemaking on the subject would be highly disruptive and potentially introduce new and complex cybersecurity related concerns. Further, NAFCU suggests that the Bureau consult with the National Credit Union Administration on how best to address this issue and exempt credit unions, should the Bureau decide to make a rule.

Conclusion

NAFCU appreciates the opportunity to provide comments on this request for information regarding the Bureau's adopted regulations. If you have any questions or concerns, please do not hesitate to contact me at kschafer@nafcu.org or (703) 842-2249.

Sincerely,

Kaley Schafer
Regulatory Affairs Counsel