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July 31, 2012

The Honorable Sam Graves
Chairman
House Small Business Committee
United States House of Representatives
Washington, D.C. 20515

The Honorable Nydia M. Velazquez
Ranking Member
House Small Business Committee
United States House of Representatives
Washington, D.C. 20515

Re: The Impact of CFPB Regulations on Small Business

Dear Chairman Graves and Ranking Member Velazquez:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions, I write in conjunction with tomorrow's hearing, "Know Before You Regulate: The Impact of CFPB Regulations on Small Business." NAFCU appreciates the committee's ongoing efforts in identifying obstacles to job creation and small business growth, as well as the opportunity to weigh in on this important issue.

The Consumer Financial Protection Bureau (CFPB) began its *Know Before You Owe* initiative to combine mortgage loan disclosure forms in May 2011. The project was set up to integrate two federally required mortgage disclosures into a single, simpler form that makes the costs and risks of the loan clearer for borrowers, and to reduce burdens on lenders.

For more than thirty-five years, two federal laws (the *Truth in Lending Act* or "TILA," and the *Real Estate Settlement Procedures Act* or "RESPA") have required lenders and settlement agents to give consumers two different but overlapping disclosure forms regarding a mortgage's terms and costs. This duplication has long been recognized as inefficient and confusing for consumers and the industry. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the CFPB is responsible for solving this problem by combining the disclosures.

However, TILA and RESPA are separate laws with different and sometimes inconsistent requirements. The CFPB proposed rules to integrate the statutory requirements and resolve any inconsistencies. The CFPB's approach to the disclosure forms attempts to clearly convey the information that the laws mandate and highlight the information consumers really need to know.

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In February, The Consumer Financial Protection Bureau (CFPB) announced the formation of a Small Business Review Panel as part of its initiative to integrate the mortgage disclosure forms that borrowers receive when applying for and closing on a loan. The review panel was set up to solicit feedback from small businesses that make mortgage loans and conduct mortgage closings. Engaging with the industry is meant to help the CFPB understand the benefits and costs from the businesses – large and small – that are likely to be directly affected by the new mortgage disclosure.

Upon announcement, CFPB Director Richard Cordray said, “This is another step in the CFPB’s wide-ranging efforts to gather the input of the people who will be affected by our rules. The CFPB is dedicated to issuing thoughtful, research-based rules that take into account not only the benefits to consumers but also how businesses of all sizes will be affected. We take all feedback seriously.”

In February, NAFCU Board member, Jeanne Kucey, the President/CEO of JetStream FCU in Miami Lakes, Florida, participated in the CFPB’s SBREFA panel on the *Know Before You Owe* project. Several of NAFCU’s members also participated in the CFPB’s SBREFA panel on mortgage servicing and mortgage loan originator compensation.

This panel sought input directly from small financial entity representatives about potential costs of a proposed rule and potentially less-burdensome alternatives before issuing the proposal for public comment. The representatives provided the panel with feedback on the benefits and burdens of complying with the proposals the CFPB considered, and suggested alternatives that would minimize those burdens.

Overall, the process was a positive one. The CFPB announced the SBREFA panel on the *Know Before You Owe* project approximately two weeks before the panel was held. The CFPB staff responsible for conducting the panel did an excellent job. The moderator was very knowledgeable, incredibly familiar with the intricacies of the existing rules, and effortlessly led a discussion that included approximately twenty industry representatives, some of whom were participating by phone. Our primary concern with the SBREFA panel is that the materials provided to participants were often vague and provided little concrete guidance as to exactly how the CFPB planned to implement the changes. However, NAFCU understands that the CFPB has a difficult balance to strike in this regard. On one hand, more information would have been useful to the panel participants. On the other hand, the purpose of the panel is to help inform the CFPB as to how the rule should be written, and consequently, we recognize that the Bureau cannot be expected to have a complete proposed rule written at that early stage.

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While the focus of this hearing is on the CFPB's *Know Before You Owe* project, I would like to take the opportunity to commend the process behind all three of the SBREFA panels the CFPB has conducted to date; the other two panels being on mortgage servicing and mortgage loan originator compensation.

Within 60 days of convening, the review panel is charged with completing a report on the input received from representatives during the panel process. The report should contain the panel's findings on the potential effects of the proposed regulation on small providers and any significant alternatives that accomplish the objectives of the proposed rule while minimizing such impacts. The CFPB then considers the panel's report and the comments and advice provided by small providers as it prepares the proposed rule. The CFPB formally released the proposed rule for comment on July 9, 2012.

While NAFCU is happy with the process of the SBREFA panels, the proposed rule consolidating the TILA and RESPA forms is troublesome. While the CFPB did listen to the concerns raised by the panel participants, those concerns seem to have gone, in large part, unheeded. For example, the CFPB proposes altering the definition of what constitutes an application. Current regulations include a "catch all" provision that permits a lender to ask for additional information (beyond name, home address, social security number and other basic identifying information) to help guide the underwriting process. The proposed rule would eliminate the catch all provision. The rule also would make new changes requiring documents that could previously be provided at settlement to be provided three days before settlement. Stricter rules would also exist for the tolerances that are permitted for certain settlement charges. These are just some of the most serious concerns raised by the proposal.

As the CFPB's report on the SBREFA panel illustrates, these concerns were clearly voiced by panel participants. Yet, those concerns had little, if any impact on the actual proposed rule. This is not to say that the proposal is entirely negative from NAFCU's perspective. For example, NAFCU is pleased to see the CFPB is considering the elimination of certain confusing disclosures regarding the lender's cost of funds. However, on several of the most important issues it seems the SBREFA process had little actual impact on the proposed rule.

The three issues listed above regarding the application, three-day advance disclosure and stricter tolerances for settlement charges, illustrate a fundamental concern that NAFCU has with the *Know Before You Owe* project and the other mortgage rules the agency is working to promulgate. The agency is determined to ensure consumers receive very accurate information regarding each step in the loan process, from application to closing. At the same time, the CFPB's proposals limit the information lenders have to guide the decision making process and shorten the time

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frames to comply. The two goals of speed and accuracy cannot always be easily reconciled. This is particularly true for small credit unions that will find it more difficult to turn around loan applications in short order with less information than they currently use. Further, if certain settlement charges turn out to be inaccurate, even for relatively small margins, it is the lender that is the party responsible for paying the difference. That responsibility is somewhat problematic now, but it is even more problematic in the context of this proposed rule, as lenders will continue to shoulder that responsibility even as they are required to work with less information and shorter deadlines.

NAFCU appreciates the CFPB working to include industry representatives in the development of new rules that will directly impact their businesses. While the CFPB has done well in bringing these Small Business Review Panels together, we urge them to make it clear exactly how the representatives' feedback is weighed and shed more light on what aspects of their recommendations are considered when deciding what to include in a final proposal. We look forward to providing additional feedback going forward.

On behalf of the nearly 94 million credit union members across the country, we thank the Committee for your oversight on this issue. If my colleagues or I can be of assistance to you or if you have any questions regarding this issue, please feel free to contact me or NAFCU's Vice President of Legislative Affairs, Brad Thaler at (703) 522-4770.

Sincerely,



Fred R. Becker, Jr.
President and CEO

cc: Members of the House Small Business Committee