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NAFCU | Your Direct Connection to Education, Advocacy & Advancement

July 7, 2014

Ms. Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552

RE: Amendments to the 2013 Mortgage Rules Under the Truth in Lending Act (Regulation Z), Docket No. CFPB-2014-0009;
Requests for Comment regarding correction or cure of debt-to-income ratio overages and the credit extension limit for the small creditor definition

Dear Ms. Jackson:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents federal credit unions, I write to you regarding the Consumer Financial Protection Bureau's (CFPB) Request for Comment regarding a correction or cure of debt-to-income ratio overages and the credit extension limit for the small creditor definition. Particularly, in this Request for Comment the CFPB is soliciting feedback as to whether there should be a mechanism for curing debt-to-income ratio overages similar to the one it has proposed for points and fees overages, and information about the current numerical limits set for the definition of small creditor and its impact on mortgage lending.

First and foremost, NAFCU appreciates the CFPB's ongoing efforts to work with industry stakeholders to find opportunities to adjust previously issued mortgage rules and both reduce their burden on providers and enhance their protections for consumers. While NAFCU understands that the CFPB operated under statutory deadlines to implement its regulations, open dialogue with industry stakeholders and the regulatory amendments that result from such dialogue are vital to ensure that rulemaking does not cause a reduction in available credit for consumers.

I. Request for Comment on Cure or Correction of Debt-to-Income Overages

Under the current rules, to meet the requirements of a qualified mortgage, the consumer's total monthly debt-to-income ratio (DTI) cannot exceed 43 percent at the moment of consummation. A credit union that erroneously calculated a consumer's DTI thus would lose qualified mortgage status for the loan extended to the consumer under the current rules. The CFPB has already proposed amending Section 1026.43(e)(3)(iii) to allow a lender to cure certain situations in which it intended to originate a qualified mortgage in good faith but later discovered that they had inadvertently exceeded the points and fees threshold. We believe that there should be a similar cure or correction process for inadvertent errors related to a consumer's debt-to-income (DTI). Even if the credit union does all of its due diligence to verify all income and debt numerous times before closing, there are certain instances of misrepresentations, miscommunications, or human error that would require a credit union to make an adjustment and reclassify as needed.

NAFCU recommends that the CFPB should allow a cure or correction mechanism where: (1) a credit union has made an inadvertent error in calculating a consumer's debt, income, or DTI ratio; or (2) a credit union has ceased documenting a consumer's debt or income due to a mistaken belief that the credit union has reviewed sufficient validating documentation to determine if it meets the 43% DTI threshold. In such cases, the CFPB should permit a credit union either to update and correct its calculation or to document the additional debt or income that existed at the time it consummated the loan. The additional documentation should consist of materials in the credit union's possession at the time it consummated the loan but that it, through inadvertence, had not reviewed or incorporated into its calculation of the consumer's DTI. For these purposes, the CFPB should define inadvertence clearly and through measurable parameters in the proposed rulemaking and should not expand on the scope of lenders' current duties under the rules in order to demonstrate "inadvertent error."

The CFPB has expressed concern over the potential for such a cure or correction mechanism to lower lender's underwriting and due diligence standards. NAFCU does not believe that this should be a source for concern because the CFPB could implement similar requirements as it has proposed for the points and fees mechanism (e.g. discovery of an error within a certain time period and the need for an established review and evaluation process) to ensure that lenders only use the mechanism in good faith. Further, an error in the calculation of a consumer's DTI is fundamentally different from an error in calculating the appropriate level of points in fees in that an error related to the DTI does not necessarily result in additional financial costs for the consumer. Accordingly, a pecuniary remedy for the consumer is inappropriate in this situation.

This change would also be beneficial to consumers in that it would stop further contraction of the lending market. Lenders are hesitant to extend loans that may not meet the qualified mortgage requirements due to the potential for serious liability. Accordingly, lenders will likely not grant mortgages to consumers close to the DTI ratio threshold for fear of an inadvertent error stripping away the much-needed safe harbor provisions. In addition, uncertainty over the qualified mortgage status of a loan could result in lenders pricing loans at a higher level in order to pass on the potential legal costs to consumers. Moreover, errors in DTI, resulting in the loss of QM status, drive disruptive repurchase demands from the secondary market. A cure or correction mechanism would alleviate these concerns and operate to benefit consumers by allowing lenders to feel more comfortable lending to a greater base of consumers and expanding overall access to credit.

## II. Request for Comment on the Credit Extension Limit for the Small Creditor Definition

In summary, the CFPB's current 2013 mortgage rules provide several exceptions and special provisions available only to small creditors. These include loosened or alternative requirements to meet the definition of a qualified mortgage; an exemption for credit unions in rural and underserved areas from the requirement to establish escrow accounts for certain higher-priced mortgage loans; and an exemption from the prohibition on balloon-payment features for certain high-cost mortgages. To qualify as a small creditor, however, a credit union must have originated 500 or fewer covered transactions secured by a first lien mortgage in the proceeding calendar year and have had less than $2 billion in assets at the end of the preceding year.

The vast majority of credit unions of that asset size, and even those significantly smaller, typically originate more than 500 mortgages a year. NAFCU's research indicates that a large number of credit unions with less than $2 billion in assets that have small mortgage operations would not qualify for the exemption. Specifically, NAFCU's review of credit unions' call report data as of December 31, 2013, indicates that there are 887 credit unions with an asset size of less than $2 billion that consummate at least 100 mortgages per year. Of these, 203 extended 500 or more mortgages per year. Of the 203, 161 exceeded the 500 threshold in the past seven years and their total origination increased by an aggregate 223 percent.

If this trend continues, the increasing number of consumers turning to credit unions for their mortgage lending will result in many credit unions losing small creditor status. As member-owned, not-for-profit entities, credit unions lack many of the resources of larger, for-profit entities, and granting them small creditor status greatly increases competition in the market for mortgage lending and consumer choice. Unless the CFPB increases the threshold, the relief that the CFPB seeks to provide to small creditors will erode and fewer small credit unions will likely extend additional mortgages and meet their members' needs. This will result in higher mortgage costs and fewer options for low-mid income consumers, first time homebuyers, and small business owners.

Accordingly, NAFCU strongly recommends that the 500 or fewer transaction limit be raised considerably. This 500-transaction limitation is not only arbitrary, but it also does not comport with the realities of many small credit unions' lending activities. Based on our research, and consistent with our prior communications to the CFPB, NAFCU believes the appropriate "small creditor" mortgage threshold should be 1,000 mortgages per year. We are providing the attached chart, in Appendix A, to this letter, which indicates that (1) a large number of credit unions under $2 billion are already above the 500 mortgages per year threshold; and (2) a significant number are approaching the threshold. It also supports our recommendation to increase the threshold to 1,000 mortgages per year.

## III. Implementation

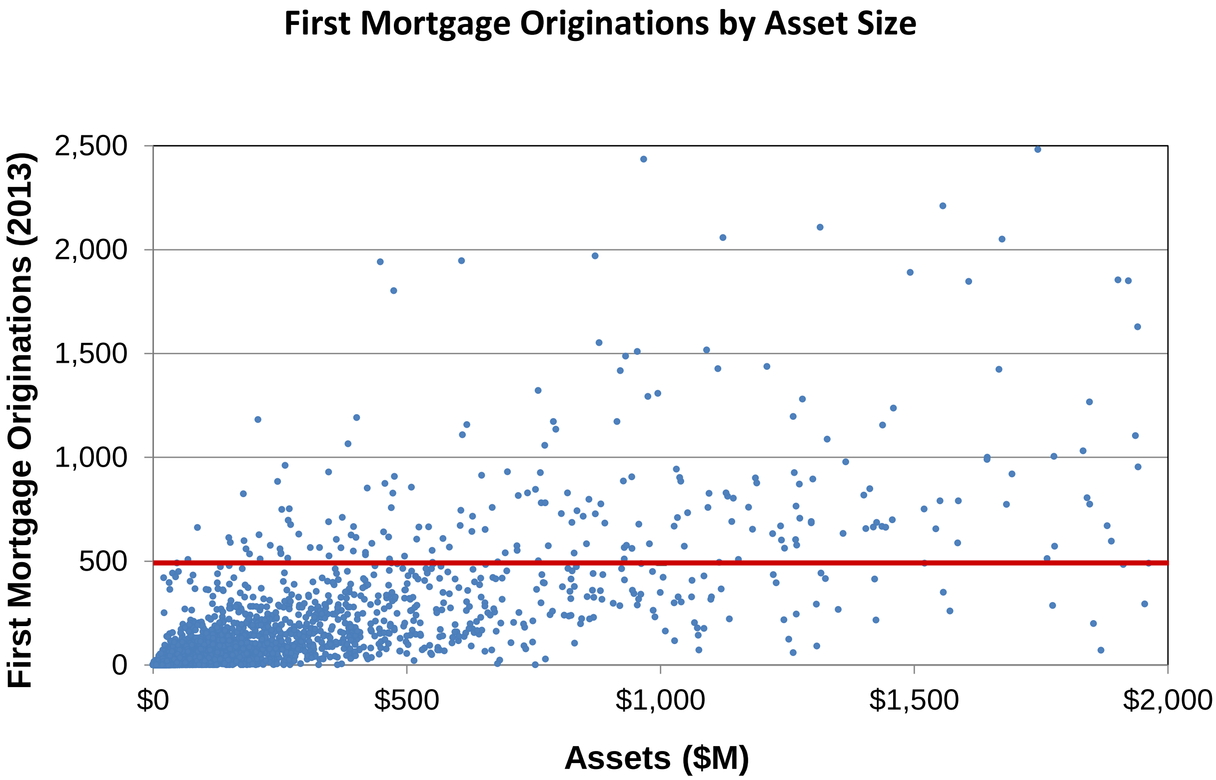
NAFCU strongly supports the CFPB's efforts to work with the industry to ease the burden of its regulations and to identify opportunities to benefit consumers further by amending regulatory requirements. NAFCU urges the CFPB, however, to consider the full scope of its regulatory process and to avoid a piecemeal, uncoordinated approach with competing timelines and changes. Regulatory implementation is an expensive, complex, and time-consuming process and amendments to one section of the regulatory scheme may have unintended consequences for other sections. Accordingly, NAFCU believes that the CFPB can continue to achieve smooth, beneficial transitions by increasing communication and transparency with the industry and other stakeholders and by soliciting feedback on the operational effects of any of revisions.

NAFCU appreciates the opportunity to provide our comments. Should you have any questions or concerns, please feel free to contact me at ameyster@nafcu.org or (703) 842-2272.

Sincerely,

Angela Meyster
Regulatory Affairs Counsel

Appendix A


First Mortgage Originations by Asset Size
First Mortgage Originations (2013)
2,500
2,000
1,500
1,000
500
0
$0
$500
$1,000
$1,500
$2,000
Assets ($M)