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NAFCU | Your Direct Connection to Education, Advocacy & Advancement

March 30, 2015

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

RE: Notice of Proposed Rulemaking and Request for Comment on the Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act (Regulation Z) (RIN 3170-AA43)

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 proposed amendments relating to Small Creditors and Rural or Underserved Areas under the *Truth in Lending Act* (Regulation Z). *See* 80 FR 7769 (February 11, 2015). The proposal establishes an important step to appropriately defining a small creditor—a move NAFCU has long sought. However, for the reasons discussed below, NAFCU cannot support aspects of the amendments as proposed.

General Comments

NAFCU appreciates the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") ongoing efforts to work with industry stakeholders to properly adjust previously issued definitions applicable to small creditors. We believe the Bureau's open dialogue with industry stakeholders and the resulting regulatory amendments can ultimately ensure that the rulemaking process is effective while continuing to protect the available credit to consumers.

Further, NAFCU supports the CFPB's initiatives to exempt small community institutions from its various rulemakings through its "small creditor" and "small institution" thresholds. While the rules of the CFPB may be well-intentioned, many credit unions do not have the economies of scale that large for-profit institutions have and, without these thresholds, may be forced to end a product line or service rather than face the hurdles of complying with a new regulation. While these thresholds have provided some relief for credit unions, and NAFCU and our members support their inclusion in the CFPB's rulemakings, we firmly believe that all credit unions are small by nature of their structure and organization as not-for-profit, member-owned institutions. Accordingly, NAFCU urges the Bureau to exempt all credit unions as "small" under the CFPB's rulemakings.

In that spirit, NAFCU believes the Bureau has failed to exercise its authority to provide meaningful exemptions for credit unions. Section 1022 of the *Dodd-Frank Act* grants the CFPB broad authority to provide exemptions for small institutions from various rulemakings. NAFCU, however, believes that the CFPB has failed to utilize this authority to provide meaningful exemptions for credit unions from new regulatory burdens. Given the unique member-owner nature of credit unions and the fact that credit unions did not participate in many of the questionable practices that led to the financial crisis and the creation of the CFPB, subjecting credit unions to rules aimed at large bad actors only hampers their ability to serve their members. While the CFPB has taken steps to provide relief for smaller community financial institutions, such as the strides made in this proposal, NAFCU and our members ultimately believe that more needs to be done to exempt all credit unions. We strongly encourage the CFPB to fully utilize Section 1022 of the *Dodd-Frank Act* and exempt all credit unions from the Bureau's mortgage rules designed to address the abuses in the lending marketing that led to the recent financial crisis.

Small Creditor Origination Limit Threshold

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, among other things, 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.

Since the introduction of the 2012 mortgage rules, NAFCU has consistently maintained that the current 500 origination threshold is disadvantageous to small creditors. The vast majority of credit unions of the $2 billion 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, 2014, indicates that there are 737 credit unions with an asset size of less than $2 billion that consummate at least 100 mortgages per year. Of these, 122 extended 500 or more mortgages per year. Of the 122, 85 exceeded the 500 threshold in the past seven years and their total origination increased by an aggregate 144 percent.

Because a large number of NAFCU's members with assets under $2 billion originate more than 500 first lien mortgages, we have long sought for the Bureau to increase origination threshold to include those small creditors that the exemption is meant to benefit. Accordingly, NAFCU strongly supports increasing the origination threshold increase to 2,000 first mortgages per year. In addition, NAFCU welcomes the proposed inclusion of loans held in portfolio towards the origination threshold. NAFCU believes excluding such loans properly recognizes that small creditors who hold these loans in their portfolio do not pose the same risk to financial system as larger creditors who operate on the secondary market.

Small Creditor Asset Threshold Calculation

In its current form, the asset threshold for Regulation Z's "small creditor" exemptions only considers the assets of the lender. The proposal, however, seeks to include affiliates' assets in the threshold calculation. Accordingly, the proposed rule would require a credit union to include the assets of its affiliates that originate mortgage loans towards the $2 billion asset threshold.

NAFCU is deeply concerned about this aspect of the proposal because credit unions, unlike other lenders, can only utilize credit union service organizations (CUSOs) as a subsidiary. CUSOs, are corporate entities owned by credit unions. Unlike other affiliate structures used by the traditional banking industry, CUSOs are limited in scope and purpose. In particular, credit unions may only invest or make a loan to CUSOs that primarily serve credit unions and credit union members. Also, CUSOs are the only subsidiaries that credit unions are allowed to have under the *Federal Credit Union Act*. NCUA further restricts federal credit unions' aggregate investment in CUSOs to a maximum of 1% of their assets. For example, a $100 million credit union may only invest a total of $1 million in ***all*** the CUSOs that it utilizes.

Given these statutory and regulatory restrictions, it would be difficult, if not impossible for a credit union to create a subsidiary relationship in order to restructure its portfolio for the purposes of staying under the "small creditor" thresholds. Accordingly, NAFCU requests that the CFPB exclude CUSOs from the calculation of "small creditor" asset threshold.

Alternatively, if the CFPB is unwilling to exempt CUSOs from the definition of affiliates in the "small creditor" context, NAFCU and our members recommend that the Bureau clarify how to calculate the asset threshold in the case of a CUSO that is owned by multiple credit unions. For example, a CUSO can be wholly owned by one credit union, or partially owned by a hundred credit unions. In the case of a partially-owned CUSO, the proposal is unclear how the total CUSO asset size would count toward its 100-credit union owners for the sake of calculating their eligibility under the "small creditor" asset threshold. Without clarification, this CUSO's assets could potentially count towards the asset thresholds of 100 credit unions. NAFCU and our members believe this seems grossly unfair and highly inaccurate.

Operating predominately in a rural or underserved areas

This proposal would amend § 1026.35(b)(2)(iii)(A), and its relevant commentary, to adjust the time period used in assessing whether the rural and underserved test is met. Currently, this section provides a three year look back period, allowing lenders to look back to any of the last three years in determining if the credit union meets the threshold. If the lender has serviced a rural or underserved area during that time, the lender may continue to operate as such for the calendar year. The proposal, however, would eliminate this three-year look back and instead would only look back to the preceding year. Thus, NAFCU has great concern and must oppose the proposed rules surrounding the drastic reduction to the look back provision because it puts credit unions at a stark disadvantage.

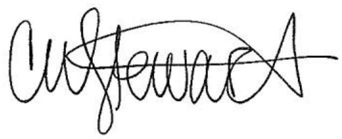
NAFCU recommends either maintaining the three-year look back period or extending the effective date to January 1, 2017. First, reducing the look back period from three years to one year is a drastic change and fails to consider the time credit unions need to ensure compliance with the rule. NAFCU recognizes that the Bureau is attempting to account for a change in lender's status by including a 90-day grace period following the expiration of a lender's status as a small creditor or as creditor operating predominately in a rural or underserved area, but it simply doesn't go far enough. Maintaining the current three-year look back period allows credit unions to strategically plan.

A majority of NAFCU's members have indicated that they develop their forward-looking strategies with a two or three-year outlook. This timeframe allows them to plan their business models proactively and safely. A credit union's status as "operating predominately in a rural or underserved area" is a key component in creating its strategic plan. NAFCU has concerns that the proposal will curtail a credit union's ability to do such planning. We urge the Bureau to retain the three-year look back because we believe a credit union's status as "operating predominately in a rural or underserved area" is vital aspect of a credit union's current and future business modeling.

Alternatively, NAFCU recommends that the Bureau push the effective date back to January 1, 2017, for many of the same aforementioned reasons. In addition to supporting the strategic planning process, pushing the effective date would also give credit unions time to adjust their strategic plans and seamlessly comply with a final rule. Under the current proposal credit unions would have 6 months or less to comply and such a short window poses compliance risks to small credit unions. Essentially, the proposal in its current form punishes a credit union for practicing sound business planning. NAFCU is confident that stifling sound business planning is not the intent of the Bureau and thus recommends an appropriate adjustment. Finally, because the credit union industry continues to grow and the Bureau has accounted for this growth by implementing flexibility in other parts of the proposed rule, specifically the origination threshold, offering flexibility for the evolving rural and underserved definitions demonstrates a consistent, balanced approach. Thus, NAFCU reiterates our recommendation that any final rule include a two-year look back period or that an updated effective date of January 1, 2017 be applied.

NAFCU appreciates the opportunity to provide our comments. We look forward to the continuing work with the Bureau as the proposal moves to its final stages. Should you have any questions or concerns, please feel free to contact me at cstewart@nafcu.org or (703) 842-2272.

Sincerely,



Celina Stewart
Regulatory Affairs Counsel