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NAFCU | Your Direct Connection to Education, Advocacy & Advancement

September 7, 2012

Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G St., NW
Washington, DC 20006

RE: Docket No. CFPB–2012–0029

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) proposed changes to the Home Ownership Equity Protection Act (HOEPA). Several of the provisions in the proposed rule are specifically required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) and the Bureau consequently has limited flexibility in implementing those changes. The Bureau, however, does propose some changes to the rule that are not required by the Dodd-Frank Act. NAFCU is concerned with some of these proposed changes. We would again ask the CFPB to take into consideration when promulgating rules that many of our members are low-volume lenders. The CFPB's actions to date, such as on remittances, have nevertheless set a threshold that is too low even for low-volume credit unions. Many credit unions have to comply with the same rules as larger and more complex lenders, yet have significantly fewer resources.

Finance Charge and the Transaction Coverage Rate

As a preliminary matter, NAFCU is concerned that the Bureau is seeking to impose requirements or require additional changes that are not mandated by the Dodd-Frank Act. The CFPB is currently working on promulgating at least eight different rules that will have a dramatic impact on the mortgage market.[1] Additionally, several other agencies are working on a rule on qualified residential mortgages (QRM) and there is an ongoing debate regarding the future of the government sponsored enterprises (GSEs), both of which will have a significant impact on the housing and mortgage industry. To date, the CFPB has issued six mortgage proposals, totaling more than 2,300 pages. Further, most of those rules must be finalized by early January of 2013. Given the relatively short time between the final rules being published and the different effective dates of the Dodd-Frank Act, the nation's mortgage lenders will, undoubtedly, struggle to comply with the statutorily required changes. Given the enormous challenges presented by the Dodd-Frank Act and the tremendous strain lenders will be under to

[1] The CFPB is required by the Dodd-Frank Act to promulgate rules on the following matters: (1) Consolidation of the disclosures required under the Real Estate Settlement Procedures Act (RESPA) and the Truth in lending Act (TILA); (2) Home Ownership Equity Protection Act (HOEPA); (3) Mortgage servicing; (4) loan originator compensation; (5) Appraisals; (6) qualified mortgages; and (7) escrow accounts. The CFPB is also working with other federal banking regulators on an eighth rule regarding appraisals for higher-risk mortgages.

comprehend the rules, update systems and processes, train staff, and ultimately comply, the CFPB should reconsider the aspects of any proposal that are not specifically required by the Dodd-Frank Act. Specifically, there is no pressing need to make changes to the finance charge calculation, nor is there a need to make corresponding changes regarding the transaction coverage rate (TCR). Our position on this issue is part of a broader policy that the CFPB should not, at this time, add to the regulatory burden for mortgage lenders by promulgating rules that are outside the scope of the requirements of the Dodd-Frank Act.

NAFCU also opposes the proposed changes to the APR and the new TCR because they add unnecessary complexity to an already complicated process. This will only increase the potential for mistakes and errors that may have lasting repercussions for borrowers and lenders. Currently, lenders need to calculate the APR and the points and fees for disclosure purposes. Additionally, these same figures are used to determine if loans qualify for the special protections of HOEPA. Determining the APR and the points and fees is somewhat complex, but lenders are familiar with the process and are comfortable making those calculations. The Bureau's proposal would replace the existing process with something significantly more complex. Under the CFPB's proposal, the fees that are included in the finance charge would change, requiring lenders to reassess how that formula is calculated. The finance charge is part of the APR and the points and fees calculation. Consequently, lenders would also need to make corresponding changes to the way those figures are calculated, retrain staff and revise disclosures.

The proposal would also require lenders to use the APR and points and fees for disclosure purposes and then use the separate TCR for purposes of determining whether HOEPA applies. The result is that where lenders previously only needed to figure out two items, they will now need to determine three different figures, as the APR will be supplemented for coverage purposes by the TCR. The process for determining the points and fees will also become more complicated. Under the proposal, points and fees for closed-end mortgage loans will include all of the items in the newly defined finance charge; however, for purposes of determining HOEPA coverage for closed-end loans, points and fees would not include those newly added items to the finance charge. Accordingly, the proposal adds unnecessary complexity to an already burdensome process and NAFCU opposes the change. Further, as the CFPB acknowledged, many consumers do not understand the difference between the APR and the interest rate. Moreover, because this proposal would increase the disparity between the APR and the interest rate, it very well may create more confusion. Consequently, all of these changes are likely to result in little tangible benefit.

If the Bureau ultimately decides to adopt the proposed changes to the finance charge defintion, it should work diligently to prevent unnecessary compliance burdens on credit unions. For example, the Bureau has the authority to create an online portal that could be used by mortgage lenders to obtain a certification regarding HOEPA coverage for a particular transaction. Credit unions would be able to input their loan terms into the portal and receive a certification from the Bureau regarding whether the loan would be covered by HOEPA or not. This, or any similar approach by the Bureau, would help reduce the compliance burden of credit unions from determining whether or not their loans are covered by HOEPA.

Effective Date

The CFPB requested input on the effective date for this rule. NAFCU encourages the CFPB to provide ample time between when regulations are finalized and the effective date. Preferably, the date should be no earlier than January of 2014. A number of changes required by the Dodd-Frank Act must become effective within one year of being finalized. Other rules, including this one, must be finalized by a certain date but do not have required effective dates. The sheer scope of the changes required by the Dodd-Frank Act, the multiple competing timelines, and the interaction between some rules that have a required effective date and other rules that do not, make choosing an effective date difficult. To the extent possible, however, NAFCU encourages the CFPB to provide as much time as possible for regulations that do not have a statutorily required effective date. Given the interplay between so many of the mortgage rules, lenders will likely have a plan in place that will bring the institution into compliance in the most timely and most cost effective manner, regardless of the effective date of individual provisions. Consequently, even if a later effective date is provided, borrowers will likely see the benefits of many provisions well beforehand simply because lenders will find it more cost effective to make some changes at the same time. With this in mind, NAFCU requests the Bureau provide as much leeway as possible regarding those provisions where the statute permits flexibility.

Debt Acceleration

In § 32(d)(8), the CFPB provided a list of when a lender may accelerate the debt on a high cost mortgage and asked for other instances where acceleration is appropriate. The final rule should permit acceleration of debt in instances where a borrower has failed to adhere to the terms of a loan modification. This scenario may arguably be covered by the option that permits acceleration in the event of a default, however, NAFCU believes it would be appropriate to include a specific provision or additional commentary to clarify that default on a modification would be covered.

Counseling Requirements

NAFCU understands that the counseling requirements included in the proposal are largely mandated by the Dodd-Frank Act. Nonetheless, they will prove burdensome, will slow down the mortgage process and ultimately add costs to the transactions. Tracking additional paperwork, and setting up a system to confirm the counseling has taken place will be burdensome. Additionally, requiring borrowers to participate in face-to-face or classroom counseling is burdensome and time consuming for the borrower. While NAFCU understands that counseling is required, we would recommend the CFPB consider permitting the counseling requirement to be fulfilled over the telephone or online.

NAFCU does appreciate the Bureau's plan to set up a website that allows the lender to select the appropriate counselors based on the customer's zip code. A list of five counselors is sufficient. NAFCU requests that the Bureau provide additional guidance on how to make the disclosure in cases where there are not five counselors located in the borrower's zip code or in neighboring zip codes. In rural areas, it is quite possible that there may not be more than one or two counselors located conveniently to the borrower. Accordingly, the Bureau should provide guidance on how to best proceed in these situations. For example, it might be appropriate to only provide a list of two counselors if there is not a third option available within fifty miles.

Compensation paid to Loan Originators

NAFCU supports the CFPB's determination not to include compensation paid to loan originators for open-end plans in the points and fees calculation. NAFCU opposed including mortgage loan originator compensation in the points and fees for closed-end mortgages as the process is unnecessarily complex and provides little value to borrowers. These costs are impossible to accurately capture and disclose in this way and we urge the Bureau to retain this policy in the final rule.

NAFCU appreciates the opportunity to share our thoughts regarding this matter. If you have any questions or concerns, please feel free to contact me.

Sincerely,

Carrie R. Hunt

Carrie Hunt
General Counsel and Vice President of Regulatory Affairs