



**National Association
of Federal Credit Unions**
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NAFCU | Your Direct Connection to Education, Advocacy & Advancement

October 16, 2012

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1500 Pennsylvania Ave. NW
(Attn: 1801 L Street)
Washington, D.C. 20220

RE: Docket No. CFPB-2012-0037; Loan Originator Compensation

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 a proposed rule on loan originator compensation issued by the Consumer Financial Protection Bureau (CFPB). *See* 77 Fed. Reg. 55272 (September 7, 2012).

The proposal would implement several provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) regarding mortgage loan originator compensation. Generally, under the proposal, in order to impose upfront points and/or fees on a mortgage, a credit union must also make available to the consumer a comparable, alternative loan with no upfront discount points or origination fees that are retained by the credit union, broker or an affiliate of either (0-0 alternative). The proposal would also continue the general ban on loan originators being compensated by the borrower and the creditor, or other parties, extend the existing ban on loan originators receiving compensation based on the terms of the loan and clarify certain issues regarding that prohibition. Further, the proposal attempts to clarify issues concerning incentive-based compensation plans and when a credit union can pay bonuses or other incentive-based payments to personnel who originate mortgage loans.

General Comments

As the CFPB officials have repeatedly stated, credit unions did not engage in the unscrupulous mortgage lending practices that led to many of the concerns that this and many of the CFPB's other rulemakings seek to address. On the contrary, credit unions' practices have sought to ensure that borrowers are offered and provided mortgage loans that place them in the best position possible to repay their mortgages. This is evidenced by the continued relatively low delinquency rate seen throughout the credit union industry. Thus, NAFCU finds objectionable that the CFPB is, once again, grouping credit unions

with mortgage lenders for which certain regulations, including this rulemaking, may be appropriate.

NAFCU urges the CFPB to carefully reconsider its obligations under the Small Business Regulatory Enforcement Fairness Act (SBREFA). Under SBREFA, the CFPB is required to consider three specific factors during the rulemaking process. First, the agency must consider “any projected increase in the cost of credit for small entities.” Second, the CFPB is required to examine “significant alternatives to the proposed rule which accomplish the stated objective of applicable statutes and which minimize any increase in the cost of credit for small entities.” Third, the CFPB is to consider the “advice and recommendations” of small entities. 5 U.S.C. § 603(d). This directive serves an important function. When Congress passed the Dodd-Frank Act, it expected the newly-established CFPB to be a proactive regulatory body.

NAFCU believes the decision to subject the CFPB to SBREFA was a conscious decision to help ensure that regulations, promulgated with large entities in mind, do not disproportionately impact small financial institutions that were not responsible for the financial crisis. Even though the CFPB mentions the SBREFA process in the rulemaking, NAFCU does not believe the CFPB has given adequate consideration to the burden that the proposed rule would have on small entities. In fact, it does not appear that the CFPB made any changes at all relative to SBREFA. Accordingly, as the proposed rule would have significant and disproportionate impact on small entities, the CFPB should use its discretionary authority to exempt small entities from the rulemaking.

0-0 Alternative

NAFCU opposes the proposed general requirement to include a 0-0 alternative mortgage loan when providing a quote to a consumer with a loan that has points and fees. We believe that providing this alternative along with estimates of a loan that does contain up-front points and fees will create unnecessary consumer confusion. At the point when loan estimates are provided, consumers are usually aware whether the loan for which they applied includes discount points and fees. Thus, it would not add value to consumers to offer additional information of another option that the consumer did not request. NAFCU recommends that credit unions be allowed to make 0-0 alternative loans available upon request if and when the consumer qualifies for such loans.

The CFPB also requests comments on whether a 0-0 alternative loan should be included in advertisements. NAFCU strongly opposes such requirement and urges the CFPB to refrain from taking such approach. Imposing such a requirement, we believe, is not reasonable as consumers may not qualify for such loans or those who do qualify could be misled to making a less favorable choice. Ultimately, including a 0-0 alternative loan would confuse consumers. We believe that a better approach to attaining the goals that the CFPB is seeking to achieve would be to make the 0-0 alternative available upon request. For example, a general statement that alternative mortgage loan products are available for qualified borrowers upon request should suffice.

Additional Comments

NAFCU strongly opposes an alternative the CFPB is considering that would permit a creditor to make a loan that includes discount points and origination points or fees only where the consumer also qualifies for an alternative loan that does not include discount points and origination points and fees. Such alternative, as the CFPB recognizes in the preamble of the proposed rule, would greatly hinder credit availability. NAFCU contends that this alternative is simply untenable as it would not only reduce credit, but also make home ownership virtually unattainable for many consumers.

NAFCU appreciates the opportunity to comment on this proposed rule. If you have any questions or concerns, please feel free to contact me at (703) 842-2268 or ttefferi@nafcu.org.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tessema Tefferi".

Tessema Tefferi
Regulatory Affairs Counsel