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National Association of Federally-Insured Credit Unions

May 1, 2023

Comment Intake - Loan Originator Rules
RFA Review
Legal Division Docket Manager
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

RE: RFA Review of Mortgage Loan Originator Rules (Docket No. CFPB-2023-0017)

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU) I am writing in response to the request for comment (RFC) on the economic impact of the Consumer Financial Protection Bureau's (CFPB or Bureau) Mortgage Loan Originator rules (Loan Originator rules) on small entities pursuant to the Bureau's Regulatory Flexibility Act (RFA) Review. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 135 million consumers with personal and small business financial service products. NAFCU appreciates this opportunity to share our members' feedback on the impact of the Loan Originator rules. As a general matter, NAFCU's member credit unions view the Loan Originator rules in a positive light and support their role in promoting consistency and trust in mortgage lending and helping to deter bad actors from misleading their borrowers. Although NAFCU has some minor recommendations for changes to the rules and requests continued clarifying guidance, NAFCU and its members support the continued need for the rule.

General Comments

The Bureau's Loan Originator rules are reasonable, measured regulations that were appropriately narrow in scope to address the problem for which they were created, namely, predatory lending practices and mortgage fraud in the aftermath of the 2008 financial crisis. Prior to the Loan Originator rules, the mortgage lending industry was largely self-regulated, which allowed for a range of predatory practices such as steering borrowers into subprime loans with high interest rates and fees and providing borrowers with incomplete or misleading information about their loans. These practices contributed to the housing market crash and the subsequent financial crisis.

These bad actors also harmed reliable lenders like credit unions. The widespread availability of predatory loans and other high-risk mortgage products inflated housing prices, making it difficult for credit unions and other responsible lenders to compete. As a result, credit unions that offered more affordable and responsible lending products were at a disadvantage in the marketplace. Additionally, the high rates of foreclosure resulting from the widespread use of predatory and high-risk mortgage products had a negative impact on the overall economy. This economic downturn had a ripple effect on credit unions and other financial institutions, leading to increased loan delinquencies and defaults, and decreased loan demand. The fallout from this crisis also led to increased regulation and scrutiny of the mortgage lending industry. While this was necessary to prevent future crises, it also placed a significant burden on credit unions and other responsible lenders that were already operating in a responsible and transparent manner.

Loan Originator Rules

Crucial to ensuring transparency in mortgage lending through the Loan Originator rules is the requirement that lenders provide borrowers with disclosures and information about their mortgage loans. Lenders must provide borrowers with a Loan Estimate, which includes information about the loan's terms and costs, and a Closing Disclosure, which provides a detailed breakdown of the costs associated with the loan. These disclosures help to ensure that borrowers have the information they need to make informed decisions about their mortgages and understand the costs associated with their loans.

The Loan Originator rules also include provisions that deter bad actors from misleading their borrowers or acting upon financial incentives that run counter to the incentives of the borrowers. Lenders are prohibited from paying Mortgage Loan Originators (MLOs) based on the terms of the loan, which can prevent MLOs from steering borrowers towards loans with higher interest rates or fees. Additionally, lenders are required to implement policies and procedures to prevent and detect mortgage fraud. While these compensation rules have had the desired effect and helped to deter bad lending practices, credit unions should have the ability to incentivize their MLOs when appropriate.

National Credit Union Administration (NCUA) Regulations Section 701.21 (c)(8)(iii)(B) permits "payment, by a Federal credit union, of an incentive or bonus to an employee based on the credit union's overall financial performance."[1] NAFCU believes that the loan growth of a credit union would qualify as analogous with the credit union's overall financial performance. Nor would compensation based on overall loan growth violate the Bureau's prohibition on compensation based in whole or in part on a factor that is a "proxy" for a term of a transaction.[2] NAFCU urges the Bureau to issue a clarifying statement that compensation based on overall loan growth is permitted.

The Loan Originator rules require loan originators to meet certain qualifications and licensing requirements, including passing background checks and completing pre-licensing and continuing education courses. While these requirements may help credit unions to attract and retain

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[1] 701.21 (c)(8)(iii)(B)
[2] 12 CFR § 1026.36

qualified loan originators, they may also increase the costs associated with hiring and training loan originators.

Additionally, the requirement for lenders to include the Nationwide Mortgage Licensing System and Registry (NMLSR) ID on certain documents like the loan application has caused some confusion among credit unions and could use additional clarification.[3] Many credit unions wait until after receiving or reviewing a loan application to assign a loan to a MLO, leaving them uncertain about whose NMLS ID to list until the application has been assigned. Although Bureau commentary has indicated that the person responsible for the loan file may change over time and that it is acceptable to assign an individual's NMLS ID on the application even if they will not be handling the application through every step in the process, smaller financial institutions could benefit from additional clarity in the form of guidance.

Costs and Benefits

For credit unions, the Loan Originator rules provide a number of benefits, and now that they have been in practice for a decade, the cost to credit unions of implementing these rules is relatively low. By promoting consistency and trust in mortgage lending, the rules help credit unions build their reputation as trustworthy and reliable lenders. Additionally, the rules can help credit unions avoid legal and financial risks by ensuring that they are in compliance with all relevant regulations. Finally, by requiring lenders to provide borrowers with clear and accurate information about their loans, the rules can help credit unions establish strong relationships with their borrowers based on trust and transparency.

In our view, the Loan Originator rules have been instrumental in promoting consistency and trust in mortgage lending, while also deterring bad actors from engaging in misleading practices. Due to the complexity of mortgage lending, these rules have established a reliable and equitable framework for all stakeholders involved. Given their long-standing presence, changing these rules would be highly disruptive and potentially more challenging than maintaining the status quo.

Despite some complexity to the rules, NAFCU believes that they are not overly burdensome or costly. While there may have been initial challenges for credit unions in adapting to the new regulations, at this point, adhering to these rules has become a standard part of credit union business processes. NAFCU's credit union members have grown accustomed to operating within this regulatory framework and do not view it as a significant cost or burden to their operations.

Conclusion

NAFCU appreciates the opportunity to share comments in response to the Bureau's RFC on the economic impact of the Mortgage Loan Originator rules on small financial institutions. If you have

[3] 12 CFR 1026.36(g)

any questions or would like additional information, please do not hesitate to contact me at 703-615-5109 or jakin@nafcu.org.

Sincerely,

James C. Akin
Regulatory Affairs Counsel