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National Association of Federally-Insured Credit Unions

November 28, 2022

Comment Intake – Mortgage Refinances and Forbearances RFI
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

**RE: Request for Information Regarding Mortgage Refinances and Forbearances (Docket No. CFPB-2022-0059)**

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Consumer Financial Protection Bureau's (Bureau or CFPB) request for information (RFI) regarding mortgage refinances and forbearances. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 133 million consumers with personal and small business financial service products. NAFCU appreciates the CFPB's review of mortgage refinance and forbearance practices, as credit unions always work with their members to adjust their mortgage loans to meet their financial needs/conditions. NAFCU recommends updating the ability-to-repay/qualified mortgage (ATR/QM) rule to provide income verification flexibility and include higher longer amortization in QM loans.

**General Comments**

During the COVID-19 pandemic, interest rates were at record lows, causing mortgage refinances to increase. Naturally, mortgage refinances are now declining because interest rates continue to rise due to inflation. According to the Mortgage Bankers Association, refinances are "88 percent lower than the same week one year ago."[1] Sometimes refinancing is not always in the consumer's best interest, often because the fees and costs involved in refinancing offset the benefits of the refinance. NAFCU's 2022 *Federal Reserve Meeting Survey* shows that 57 percent of respondents find that the imposition of fees on mortgage refinances has had or is expected to have a material impact on their credit union.

According to 2021 Home Mortgage Disclosure Act data, 97.7 percent of residential mortgages originated by credit unions were QMs. Credit unions made a slightly lower percentage of QM loans as compared to banks, community banks, and mortgage banks. This is likely due partly to

[1] Mortgage Applications Increase in Latest MBA Weekly Survey, Mortgage Bankers Association. November 16, 2022. https://www.mba.org/news-and-research/newsroom/news/2022/11/16/mortgage-applications-increase-in-latest-mba-weekly-survey

resource constraints and the regulatory burden of complying with the QM rule, especially for smaller credit unions. Credit unions work hard to help their members understand their loan options, including in cases where the borrower becomes delinquent or experiences financial hardship. Credit unions will always work closely with the borrower to find a way to refinance and/or place the loan into forbearance.

**Refinances**

Credit unions regularly obtain information from the credit bureaus to identify those members that may have equity in their homes and therefore would benefit from refinancing. The credit union will often then contact the member to inform them of their refinance options and their potential benefits. However, refinance options may not be the best option for every borrower; for example, those with a smaller loan balance do not gain many benefits from refinancing their loans. Credit unions must also differentiate between those mortgages that are eligible, and therefore likely will be sold into the secondary mortgage market and those loans that will remain in the credit unions' portfolio, because mortgages that can be sold to the secondary market often have lower interest rates than those that remain on a credit union's balance sheet. For those borrowers with smaller loan balances, refinancing a mortgage that can be sold to the secondary market requires frontloading interest, raising costs earlier in the mortgage term, and ensuring that the costs of refinancing do not outweigh the benefits.

*Ability-to-Repay/Qualified Mortgage Rule*

The ATR/QM rule in Regulation Z requires a lender to make a reasonable, good-faith determination of a borrower's ability to repay a residential mortgage loan according to its terms.[2] This rule is valuable in ensuring that borrowers are able to afford their loans and prevents foreclosure but it may be a barrier to certain refinance transactions, specifically where borrowers have an acceptable history of repaying an existing mortgage but are unable to meet income requirements for refinancing. To satisfy the ability-to-repay provisions of the rule, the creditor must, at a minimum, consider and verify eight underwriting factors, including the consumer's current or reasonably expected income or assets and current employment status.[2] The rule does not provide income verification flexibility to lenders looking to refinance borrowers into a loan with a lower monthly payment. However, several federal government programs do not require income verification to refinance a loan, including the Federal Housing Agency's Streamline Refinance[3], Veterans Affairs Interest Rate Reduction Loan,[4] and the U.S. Department of Agriculture's Streamline.[5] Instead, those rate and term refinance transactions require lenders to

[2] 12 CFR Part 1026. https://www.consumerfinance.gov/rules-policy/regulations/1026/1/
[3] https://www.hud.gov/program_offices/housing/sfh/ins/streamline
[4] https://www.va.gov/housing-assistance/home-loans/loan-types/interest-rate-reduction-loan/
[5] https://www.rd.usda.gov/files/RD-RHS-SFHStreamlinedAssistRefinanceLoans.pdf

verify a net tangible benefit to the borrower and allow the cost of refinancing to be included in the loan amount.

In each of these programs, as well as the current ATR rule provision for lenders to refinance non-standard loans into a standard loan without verifying the borrower's ability to repay, borrowers are limited to refinancing their loans with the lender or agency that currently holds the debt. Under the ATR rule, there are no options for refinancing to a different lender or agency offering the net tangible benefit analysis without reverifying income. NAFCU recommends that the rule be updated to provide income verification flexibility to lenders looking to refinance borrowers into a loan with a lower monthly payment.

Additionally, 40-year mortgages are classified as non-Qualified Mortgage loans. This hampers lenders' ability to help consumers in an environment with rising interest rates. These mortgages allow low-income borrowers to become homeowners because the loans carry lower monthly payments. NAFCU recommends that the QM rule include 40-year mortgages to allow more consumers to become homeowners.

NAFCU urges the Bureau to include longer amortization in QM loans. An ATR assessment should retain a direct measure of a consumer's personal finances as a sound underwriting practice. Historically, credit unions have had strong underwriting standards, as demonstrated by the quality of loans originated during the financial recession and the COVID-19 pandemic. However, the General QM makes it substantially more difficult for credit unions to help the members most in need of access to credit, including those in underserved areas.

**Forbearances**

According to the Federal Reserve, "nonbank mortgage companies are about 9 percentage points less likely to offer forbearance to a past-due borrower, while credit unions were about 13 percentage points more likely."[6] During times of economic uncertainty, credit unions have voluntarily implemented programs to protect their members' financial health, including skipping payments without penalty, waiving fees, low or no-interest loans, loan modifications, and no-interest accruals. NAFCU's credit union members have forbearance options visible on their website as well as information on whom to contact if a member is experiencing hardships. Credit unions support their members throughout financial hardships and do what they can to ensure that members are able to stay in their homes. The credit union knows its members best and those members may have unique circumstances depending on the credit union's field of membership. Credit unions are all working to provide their members with the individualized attention and service they require. For example, credit unions have served members in situations where an

[6] Kim, You Suk, Donghoon Lee, Tess Scharlemann, and James Vickery (2022). "Intermediation Frictions in Debt Relief: Evidence from CARES Act Forbearance," Finance and Economics Discussion Series 2022-017. Washington: Board of Governors of the Federal Reserve System, https://doi.org/10.17016/FEDS.2022.017.

emergency arises for the member, causing them to fall behind on their payments. Other members may have used Federal forbearance options under the Coronavirus Aid, Relief, and Economic Security (CARES) Act to cover short-term income lapses due to job loss. Each member's situation is different, and the credit union and the borrower have the flexibility to determine the best loan workout option and terms.

During the COVID-19 pandemic, NAFCU successfully advocated for the NCUA to remove the prohibition on the capitalization of interest in connection with loan workouts and modifications for all federal-insured credit unions. The final rule issued by the NCUA in June of 2021, provides credit unions parity with banks and the practices of the GSEs and helped allow more credit unions to provide relief to their members.[7] This regulatory change has benefitted credit union members by making their loan modifications following a forbearance easier to understand and manage in terms of monthly payments.

**Conclusion**

NAFCU appreciates the opportunity to comment on the Bureau's RFI and recommends updating the ATR/QM rule to provide income verification flexibility and include longer amortization in QM loans. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2268 or amoore@nafcu.org.

Sincerely,

Aminah Moore
Senior Regulatory Affairs Counsel

[7] 12 CFR Part 741. https://www.ecfr.gov/current/title-12/chapter-VII/subchapter-A/part-741/appendix-Appendix%20B%20to%20Part%20741