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National Association of Federally-Insured Credit Unions

July 7, 2017

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

RE: Request for Information Regarding 2013 RESPA Servicing Rule Assessment
(Docket No. CFPB-2017-0012)

Dear Ms. Jackson:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally-insured credit unions, I am writing to you in regard to the Consumer Financial Protection Bureau's (CFPB or Bureau) 2013 *Real Estate Settlement Procedures Act* (RESPA) Servicing Rule (the RESPA Rule) and its planned assessment of that rule. NAFCU and its member credit unions are particularly concerned with the CFPB's decision that the 2013 *Truth in Lending Act* (TILA) Servicing Final Rule (TILA Rule) is not a significant rule for purposes of this review. NAFCU strongly urges the CFPB to reevaluate this determination. The changes that the CFPB made to RESPA and TILA's implementing regulations, Regulation X and Regulation Z, respectively, are so intrinsically intertwined and required mortgage servicers to expand a significant amount of time and resources to implement the mandated changes. Furthermore, the changes to both regulations require ongoing compliance costs. In order to conduct a feasible and effective assessment plan, the TILA Rule should also be reviewed.

Since its implementation, NAFCU and its member credit unions have observed various issues with certain aspects of the RESPA Rule, in particular, the force-placed insurance and loss mitigation provisions. These provisions have caused complications for consumers and credit unions, alike. In order for the RESPA Rule to better achieve the CFPB's goals of transparency, efficiency, access, and innovation in the mortgage market, it is vital that the assessment plan address how the CFPB plans to improve upon these particular aspects of the RESPA Rule.

General Comments

In January 2013, the CFPB published the RESPA Rule in the *Federal Register*. This rule was amended several times before its January 10, 2014 effective date. The TILA Rule became effective on the same day. The RESPA Rule implemented Section 1463 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act), which amended RESPA mortgage servicing requirements and prohibitions on servicers of federally related mortgage loans. To comply with the RESPA Rule, mortgage servicers had to make a substantial amount of changes to their mortgage servicing practices, including new disclosures for force-placed insurance, an expanded error resolution regime, and new servicing procedures and requirements for loss mitigation of mortgage loans secured by a borrower's principal residence.

Section 1022(d) of the Dodd-Frank Act requires the CFPB to conduct an assessment of any significant rule's effectiveness in meeting the purposes and objectives of Title X of the Dodd-Frank Act, as well as the specific goals stated by the CFPB, and publish a report of the assessment no later than five years after the rule's effective date. Before publishing the assessment report, the Bureau must seek public comment on suggestions for modifying, expanding, or eliminating the significant rule.

The Bureau has determined that the RESPA Rule is a significant rule under Section 1022(d) of the Dodd-Frank Act. The CFPB has, however, determined that the TILA Rule is not a significant rule under Section 1022(d). This decision is based partly on the estimated aggregate annual cost to the industry of complying with the rule, as supported by the figures in the *Paperwork Reduction Act* (PRA) Analysis published along with each rule in 2013. This decision confuses NAFCU and its member credit unions because of how closely intertwined the rules were from the moment of their publication all the way through implementation.

In its assessment of the RESPA Rule, the Bureau plans to focus on the following areas: (1) servicer activities undertaken to comply with the RESPA Rule; (2) consumer activities regarding utilization of the rights provided by the RESPA Rule; and (3) consumer outcomes that the RESPA Rule sought to affect. The CFPB also intends to place emphasis on collecting data related to delinquent borrowers, including servicers' communications with delinquent borrowers and loss mitigation procedures. Below, NAFCU has outlined several issues regarding the RESPA Rule that may help the CFPB focus its assessment and develop a plan to improve the RESPA Rule.

Review of the TILA Rule

With regard to the determination that the TILA Rule is not a significant rule for purposes of Section 1022(d) of the Dodd-Frank Act, the CFPB's reasoning is divorced from common sense and real world experiences. Both the RESPA Rule and the TILA Rule were published in the *Federal Register* on February 14, 2013, and both rules took effect on January 10, 2014. Both rules were announced in the same press release, which made no distinction between the rules.[1] The CFPB concurrently released a fact sheet[2] and summary document,[3] which also discussed the rules with virtually no distinction between the two.

Additionally, the CFPB published a compliance guide to help smaller mortgage servicers comply with the changes and its guidance for both the RESPA Rule and the TILA Rule were in a single guide. All of these actions created an environment where, from a compliance perspective, the rules were inherently merged so servicers made changes to their processes, systems, and procedures in one large-scale effort. Therefore, the CFPB's attempt to now artificially divide the rules to avoid assessing the changes made to TILA is contrary to the experiences mortgage services have had in implementing the changes and contradicts the CFPB's own messaging regarding the rules.

Even if the TILA Rule is analyzed independently of the RESPA Rule, the reasoning provided for the determination that the TILA Rule is not "significant" for purposes of Section 1022(d) of Dodd-Frank is insufficient largely because it does not reflect real world experiences. The periodic statement requirements implemented by the TILA Rule have proven to entail significant ongoing costs for credit unions. Every dollar spent on additional notices is one less dollar that credit unions can use to provide superior products and services to their members. Thus, the additional cost burdens imposed by the TILA Rule justify the CFPB engaging in a five-year assessment as required by Section 1022(d).

Further diminishing the credibility of the CFPB's justification for why the TILA Rule is not "significant" is the fact that the CFPB's estimated value of ongoing burden hours for the RESPA Rule and the TILA Rule is exactly the same – about $19.00 per hour. Although the estimated "additional ongoing" burden from the PRA analysis are lower for the TILA Rule than those of the RESPA Rule, the cost to the credit unions actually making these changes and complying with the new requirements is not insignificant and should not be ignored. Evaluating the effectiveness of the RESPA Rule without also evaluating the effectiveness of the TILA Rule will leave the CFPB with an inaccurate understanding of the regulatory framework and costs and benefits of the implementation of the mortgage servicing rules enacted after the Great Recession. NAFCU

[1] *CFPB Rules Establish Strong Protections for Homeowners Facing Foreclosure*, Jan. 17, 2013, available at: https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-rules-establish-strong-protections-for-homeowners-facing-foreclosure/ (last visited June 21, 2017).
[2] *CFPB Rules Establish Strong Protections for Homeowners Facing Foreclosure*, Jan. 17, 2013, available at: http://files.consumerfinance.gov/f/201301_cfpb_servicing-fact-sheet.pdf (last visited June 21, 2017).
[3] *Summary of the final mortgage servicing rules*, Jan. 17, 2013, available at: http://files.consumerfinance.gov/f/201301_cfpb_servicing-rules_summary.pdf (last visited June 21, 2017).

requests that the CFPB reconsider its determination that the TILA Rule is not "significant" and conduct an assessment of the rule as required by Section 1022(d) of the Dodd-Frank Act.

Force-Placed Insurance Notice Requirements

The RESPA Rule contains various force-placed insurance notice requirements, codified at 12 C.F.R. §§ 1024.37(c)(2), 1024.37(d)(2)(i), 1024.37(d)(2)(ii), and 1024.37(e)(2). NAFCU's member credit unions work hard to craft member communications that are comprehensive, yet easy to understand. Unfortunately, the RESPA Rule's requirements for force-placed insurance notices call for language that many credit union members see as being curt and not member-friendly.

Even though the RESPA Rule allows servicers some latitude in terms of how to present the information on the notices, the portions of Regulation X noted above contain explicit requirements that a servicer must follow regarding the information to be included in the force-placed insurance notices. The RESPA Rule also explains that the model forms in Appendix MS-3 to Regulation X provide a compliance safe harbor, if used appropriately. As a result, many credit unions have used the model forms as templates for their force-placed insurance notices.

Many consumers, however, find the language contained in the model forms to be confusing and unhelpful. NAFCU's member credit unions have received various complaints from their members to this effect. In light of these complaints, NAFCU requests that the CFPB revisit the model forms contained in Appendix MS-3 to determine how to make the forms more easily digestible for consumers.

Credit unions recognize the importance of communicating the potential implications of the force-placed insurance process and, therefore, believe that the model forms provided in Regulation X do not successfully serve this purpose. NAFCU encourages the CFPB to modify the language in the model forms to better convey that message. For example, Model Form MS-3(A) states “You should immediately provide us with your insurance information,” but that same instruction could be better conveyed as follows: “If you have already obtained insurance coverage on this property, it is important that we have that information so we do not obtain or charge you for different insurance coverage. Please provide such information to us, at the address listed below, by [date required].”

Although servicers have the power to make stylistic changes to the force-placed insurance notices required by the RESPA Rule, many credit unions are hesitant to make changes to the model forms in Appendix MS-3 or to develop their own forms for fear of losing the safe harbor protections. Consequently, NAFCU urges the CFPB to consider altering the language in the model forms to be more consumer-friendly and expand the safe harbor protections to include notices that contain non-substantive changes to the model forms. NAFCU and its member credit unions are ready and willing to work with the CFPB on this issue and provide specific recommendations should the CFPB agree to address the issue in a future rulemaking.

Complications with Loss Mitigation Requirements

Credit unions, as member-owned, not-for-profit financial cooperatives that service mortgage loans in all 50 states, have had the chance to operationalize the various loss mitigation requirements under the RESPA Rule and to ensure they are properly harmonized with individual state foreclosure processes. Accordingly, credit unions have identified portions of the RESPA Rule that could benefit from further clarification to help servicers' compliance efforts. One particular area of concern is the requirements contained in §§ 1024.41(f)(2) and (g), or the portions of Regulation X that place restrictions on “dual tracking.”

Credit unions are able to follow the spirit of §§ 1024.41(f)(2) and (g), but in certain instances, notwithstanding good faith efforts, they are unable to meet the strict bounds of the restrictions against “dual tracking.” For example, while coordinating foreclosure efforts with attorneys and other support personnel in various jurisdictions across the country, a credit union must sometimes halt their foreclosure proceedings to process a loss mitigation application and inform its third-party partner(s) in the local jurisdiction. At the same time, it takes the third-party partner(s) several days to halt its efforts undertaken on behalf of the credit union.

Such third-party delays are especially pronounced in states that require judicial foreclosures. Currently, 21 states predominantly use judicial foreclosure procedures. The judicial requirements in these states make it very difficult to stop the foreclosure process immediately, as is required by the RESPA Rule. Therefore, while a credit union and its third-party partner(s) are going through the various judicial processes for halting a foreclosure action, the credit union is technically in violation of the restrictions against “dual tracking,” despite having done everything within its power to halt the foreclosure process.

NAFCU urges the CFPB to review and revise the “dual tracking” provisions of the RESPA Rule to create a safe harbor grace period, during which credit unions can get their third-party partner(s) to halt their foreclosure processes without violating the prohibition against “dual tracking.” If the CFPB made this change, it would still be able to accomplish the goal of preventing “dual tracking,” while also granting much needed flexibility to servicers who are working in good faith to comply with the RESPA Rule’s requirements. NAFCU encourages the CFPB to engage in a rulemaking to resolve this issue for the mortgage industry.

Conclusion

NAFCU appreciates the opportunity to provide our comments on the 2013 RESPA Servicing Rule and the CFPB's plan to assess the rule. If you have any questions or concerns, please do not hesitate to contact me at (703) 842-2212 or akossachev@nafcu.org.

Sincerely,

Ann C. Kossachev

Ann Kossachev
Regulatory Affairs Counsel