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National Association of Federally-Insured Credit Unions

November 9, 2020

The Honorable Kathleen Kraninger
Director
Bureau of Consumer Financial Protection
1700 G Street N.W.
Washington, D.C. 20552

RE: NAFCU's Regulatory Priorities

Dear Director Kraninger:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I would like to share with you the top priorities of our nation's credit unions for the remainder of 2020. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve nearly 122 million consumers with personal and small business financial service products. These priorities outline areas that are best suited for regulatory relief and expanded flexibility to help assist credit unions as they continue to manage the impacts of the COVID-19 pandemic going into the new year. NAFCU urges the Bureau of Consumer Financial Protection (Bureau or CFPB) to evaluate the below issues and enact the requested policy modifications to better equip our nation's credit unions to emerge healthy and strong from the pandemic and resultant economic downturn. We hope that you will work with us to address these concerns.

Executive Summary

1. *Delay Section 1071 Rulemaking.* Due to the potential adverse impacts, NAFCU urges the Bureau extend the timeline for a formal section 1071 rulemaking and continue to study and analyze a potential rulemaking's impacts on the credit union industry.
2. *Electronic Disclosure Relief and Credit Card Accountability Responsibility and Disclosure Act of 2009 Act (CARD Act) Improvements.* NAFCU reiterates its call for additional relief on electronic disclosure practices and asks that the Bureau exclude secured credit cards from the ability-to-pay requirements of the CARD Act, among other changes.
3. *Temporarily Halt the Qualified Mortgage (QM) Rulemaking.* The Bureau should temporarily delay the ability-to-repay (ATR)/QM rulemaking efforts until the pandemic subsides.
4. *Revise Home Mortgage Disclosure Act (HMDA) Rule and Reporting.* The HMDA rule should be revised to scale back the collection of discretionary data points and increase the reporting coverage thresholds and the Bureau should provide flexibility regarding reporting.

5. *Facilitate the London Interbank Offered Rate (LIBOR) Transition.* An orderly and efficient transition to alternative rate indices is critical and the CFPB should provide a supervisory policy accommodating a reasonable and good-faith interpretation of contract language.
6. *Unfair, Deceptive, or Abusive Acts and Practices (UDAAP) Guidance and Rulemaking.* Additional clarity from the Bureau on specific factual bases for violations will assist credit unions in mitigating the risks of a violation.

CFPB Regulatory Priorities

Delay Section 1071 Rulemaking

NAFCU understands that the Bureau was required to release the Small Business Regulatory Enforcement Fairness Act (SBREFA) outline of proposals under consideration and convene a SBREFA panel by a certain date, but we urge the Bureau to delay formal rulemaking efforts until a return to economic normalcy is certain and pandemic-related externalities do not inject uncertainty into the Bureau's assumptions and analysis. Section 1071 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act) requires financial institutions to collect and report information to the CFPB on small business loan data using similar systems and procedures to those currently used with HMDA reporting. The goal is to facilitate enforcement of fair lending laws and enable communities, business, and other entities to better understand the needs of women-owned and minority-owned small businesses.

NAFCU remains concerned that future implementation of section 1071 may yield misleading information about credit unions and negatively influence future small business lending. Due to credit union constraints with providing loans to small businesses that fall squarely within their fields of membership, the information collected may be skewed in relation to other lenders. Although the statutory purposes are well intentioned, the impacts not only burden credit unions with additional compliance but could also have adverse effects on overall small business lending. Due to these potential adverse impacts, NAFCU urges the Bureau to continue to study and analyze a potential rulemaking's impacts on the credit union industry. Moreover, a rulemaking at this time will only add to overall compliance burdens at a time when credit unions are making every effort to assist small business members in obtaining capital to remain viable as the COVID-19 pandemic continues to create a climate of economic uncertainty. The Bureau should delay rulemaking efforts until these adverse consequences have been thoroughly addressed.

Electronic Disclosure Relief and CARD Act Improvements

In a letter dated March 18, 2020, NAFCU recommended that the Bureau provide additional regulatory clarity to encourage more efficient electronic disclosure practices when providing disclosures via online and mobile banking platforms. Regulation Z provides that most required disclosures may be provided electronically as long as consumer consent is obtained in compliance with the *Electronic Signatures in Global and National Commerce (E-Sign) Act*. However, E-Sign's unwieldy reasonable demonstration of consent requirements no longer make sense in an

increasingly digital banking environment where consumers expect streamlined interactions to process and approve applications for products and services.

NAFCU appreciates the Bureau's temporary guidance providing flexibility to obtain consent from consumers through oral telephone interactions. NAFCU recommends incorporating this guidance into Regulation Z for all required disclosures on a permanent basis. This would provide flexibility for credit unions and benefit consumers with a seamless process, especially amid the pandemic. Additionally, NAFCU urges the Bureau to clarify that Regulation Z's "written application" under the young consumer rules may be an application taken over the telephone. This is not clear from a plain reading of the CARD Act or Regulation Z, and clarification would allow credit unions to assist young consumers more seamlessly.

NAFCU also recommends the Bureau explore a more flexible framework for applying ability-to-pay requirements in the context of secured credit cards. Currently, the CARD Act requires a creditor to evaluate an applicant's ability-to-pay for share-secured credit cards. NAFCU has long sought the exclusion of secured cards from ability-to-pay requirements because they do not carry the same level of risk for consumers as unsecured cards, and an applicant's creditworthiness can generally be determined by evaluating the borrower's capacity to pledge funds as collateral. Credit unions can easily evaluate whether a member has the ability-to-pay by verifying and holding deposited funds as collateral. Requiring a strict review of the member's current income or assets, and current debt obligations is an unreasonably high bar for lower-income borrowers. NAFCU again urges the Bureau to exclude secured credit cards from the ability-to-pay requirement of the CARD Act.

Temporarily Halt the QM Rulemaking

NAFCU has previously urged the Bureau to delay the ATR/QM rulemaking effort due to the COVID-19 pandemic and extend the Temporary Government-Sponsored Entity (GSE) loan or the "GSE Patch." The GSE Patch was previously set to expire on January 10, 2021 or upon the GSEs exiting conservatorship, whichever occurred first. NAFCU appreciates the Bureau's recent final rule extending the GSE Patch until the mandatory compliance date of the General QM rulemaking; however, we remain concerned that this delay may not be sufficient. Credit unions continue to respond to the pandemic and assist members, which includes providing mortgage loans to borrowers under the GSE Patch. NAFCU again urges the Bureau to temporarily delay the ATR/QM rulemaking efforts until the pandemic subsides.

In light of GSE Patch expiring, the Bureau released two additional proposed rules amending the General QM definition and creating a new Seasoned QM category. The Bureau noted in the General QM proposal that the agency may finalize this by April 2021. Given that credit unions continue to focus on the issues related to the COVID-19 pandemic, NAFCU is concerned that credit unions need additional time to adopt any changes to the definitions. NAFCU suggests several changes to the proposed definitions, including increasing the average prime offer rate thresholds and changing the performance and portfolio requirements for the Seasoned QM loans. NAFCU urges the Bureau to delay the ATR/QM rulemakings and continue to study the impacts

of the proposals. Credit unions should focus on serving members during the pandemic and not have to focus on shifting lending practices.

Revise HMDA Rule and Reporting

NAFCU urges the Bureau to explore continued refinements to HMDA and Regulation C. NAFCU encourages formal consideration of whether to scale back the collection of discretionary data elements adopted under the Bureau's discretionary authority to provide necessary and further regulatory relief. In addition, NAFCU asks the Bureau to continue providing transparency regarding expectations for HMDA quarterly and annual reporting. As the pandemic endures, quarterly reporting into 2021 and annual reporting due in March 2021 may be impacted.

The HMDA data is the most comprehensive publicly available information on mortgage market activity, but it continues to be a source of immense compliance burdens. HMDA-related compliance costs far exceeded their initial estimates and continue to limit credit unions' overall capacity to prioritize investments in member service. NAFCU appreciates the Bureau's recent efforts to finalize revised open-end and closed-end threshold levels for HMDA reporting. Last year, the Bureau published an advance notice of proposed rulemaking addressing potential revisions to the HMDA data points to balance the benefits with the burdens of reporting. Credit unions support the role of HMDA in ensuring fair lending and deterring discriminatory practices; however, the current reporting practices do not necessarily achieve these goals and instead impose significant compliance and reporting burdens.

NAFCU also encourages the CFPB to reconsider the sufficiency of relief afforded under HMDA's institutional and transactional coverage thresholds. Although NAFCU appreciates the Bureau's final rule which increased the reporting coverage thresholds for open-end and close-end loans under Regulation C, higher thresholds would provide more meaningful relief for credit unions. At the very least, the Bureau should consider extending for an additional year the temporary reporting threshold of 500 open-end lines of credit so that credit unions can remain focused on providing financial assistance to members affected by COVID-19 rather than brace for new HMDA compliance duties.

Facilitate the LIBOR Transition

With the 2021 sunset of LIBOR, the Bureau should take prompt action for an orderly and efficient transition to alternative rate indices. Credit unions need guidance to begin the transition in the coming year. NAFCU appreciates the Bureau's recent proposed amendments to Regulation Z to ease the transition to replacement indices, and recommends that the agency consider ways to alleviate risks to credit unions if their contracts lack flexible fallback language for switching to a new rate index. Additionally, NAFCU urges the Bureau to adopt a supervisory policy that accommodates reasonable, good-faith interpretations of contract language that is relied upon to effectuate a transition away from the LIBOR.

UDAAP Guidance and Rulemaking

Since the enactment of the Dodd-Frank Act, NAFCU has asked for clear, transparent guidance from the Bureau on its expectations for credit unions under the law or its regulations. In January 2020, the Bureau issued a policy statement providing a framework for how the agency applies the “abusive” standard in UDAAP supervision and enforcement matters. NAFCU appreciates the Bureau’s release of this guidance as the attention and resources dedicated to UDAAP compliance has continued to increase over the last few years. According to NAFCU’s 2020 Federal Reserve Meeting Survey, NAFCU members estimated a seven percent increase from last year in the number of full-time equivalent staff members devoted to UDAAP compliance over the next three years, despite the issuance of guidance.

NAFCU appreciates the Bureau’s recent guidance clarifying the “abusive” prong of the UDAAP standard and understands that the Bureau will continue to provide more clarity on the specific factual bases for violations. Additional clarity from the Bureau on the specific factual bases for violations will assist credit unions in mitigating the risks of a violation. At a time when credit unions are making every effort to assist their members, they should not be unnecessarily worried about facing potential UDAAP violations due to an unclear standard. NAFCU continues to support a UDAAP rulemaking and asks that the Bureau continue to provide additional clarifications and analyze whether a future rulemaking is necessary considering the guidance issued. Additionally, NAFCU asks that the Bureau work closely with the NCUA to resolve questions regarding whether certain credit union powers conferred by the *Federal Credit Union Act* (FCU Act) may be subject to the Bureau’s UDAAP authority.

Conclusion

NAFCU would like to thank the CFPB for its steadfast focus on providing COVID-19 relief measures. Over the remaining weeks in 2020, NAFCU recommends that the CFPB address the critical issues outlined above, including extending the timeline for a formal Section 1071 rulemaking, providing electronic disclosure relief and adopting improvements to the CARD Act, temporarily halting the QM rulemaking, revising the HMDA rule and reporting requirements, facilitating the LIBOR transition, and providing further clarity on the Bureau’s UDAAP authority. Thank you for your consideration and we look forward to working with you to address these priorities. If we can answer any questions or provide you with additional information on any of these issues, please do not hesitate to contact me or Ann Kossachev, NAFCU’s Director of Regulatory Affairs, at 703-842-2212 or akossachev@nafcuh.org.

Sincerely,



B. Dan Berger
President and CEO