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B. Dan Berger
President & Chief Executive Officer

National Association of Federal Credit Unions | www.nafcu.org

April 11, 2016

Mr. Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Mr. Cordray:

On behalf of the National Association of Federal 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 regarding your recent testimony before the Senate Banking Committee on the Consumer Financial Protection Bureau's (CFPB) Semi-Annual Report to Congress. While NAFCU appreciates many of your positive comments regarding the credit union industry, especially those related to the Payday Alternative Loan (PAL loan) program, we remain concerned with the Bureau's characterization of its authority provided in the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act) to exempt credit unions from its rulemakings. As such, NAFCU respectfully requests the opportunity to meet with you in the near future to discuss credit union concerns related to this issue and others.

General Comments

As you know, NAFCU believes that Section 1022 of the Dodd-Frank Act provides the CFPB with broad authority to grant exemptions on a rule-by-rule basis to "any class of covered persons, service providers, or consumer financial products or services." Clearly, such an exemption is, by statute, available to the nation's member-owned, not-for-profit credit unions if the CFPB would only apply its authority.

One area where the Bureau should use its exemption authority is in its upcoming rulemaking regulating payday lending. As you acknowledged in your testimony last week, the Bureau views the PAL loan program offered by credit unions as a "good product" and wants to make room for those loans in its payday lending rulemaking. NAFCU and our member credit unions support the CFPB's goal of protecting consumers from the dire financial consequences that often result from becoming entangled with predatory payday lending. To ensure the continued existence of credit unions as a viable alternative to predatory payday lenders, NAFCU recommends the Bureau apply its Section 1022 exemption authority to credit unions conducting short-term, small-amount loans in accordance with current state or federal laws, such as the PAL loan program.

Unreasonable limitations will push credit unions out of the market to the detriment of consumers.

According to the CFPB's outline, the Bureau is currently considering the addition of a number of restrictions on longer-term payday loans. The CFPB defines a "longer-term loan" as a loan with a maturity greater than 45 days with an *all-in* APR in excess of 36 percent. Although a 36 percent APR at first glance is well-above both the federal credit union general usury cap of 18 percent and PAL loan-specific interest rate cap of 28 percent, the use of an "all-in APR" would likely bring many credit union programs within the scope of "longer-term loans." These longer-term loans would be subject to extensive "ability-to-repay" standards before the loan is extended and strict presumptions of the inability-to-repay after the initial loan is extended. As mentioned briefly above, the CFPB is also considering the creation of an "alternative option" for longer-term loans that is largely based on the basic structure of NCUA's PAL loan program. However, the "alternative option" includes two important deviations from the program created by NCUA. Specifically, lenders would be required to conduct a verification of income and the borrower would be limited to two covered longer-term loans within a rolling six-month period. In contrast, NCUA regulations currently allow a federal credit union to extend three PAL loans within a rolling six-month period.

Income Verification Requirement

Since PAL loans are often used as a means to obtain desperately needed funds during emergency situations, the inevitable delays caused by the need for a lender to obtain additional income documentation from the borrower could cause the member to experience inconvenience and frustration. Federal credit unions offering PAL loans are already required to develop "minimal underwriting standards that account for a member's need for quickly available funds, while adhering to principles of responsible lending." As previously mentioned, that process includes "obtaining proof of employment or income, including two recent paycheck stubs." A more extensive income verification requirement is likely to increase the length of time and amount of cost required to process a short-term, small-amount loan. Increased processing costs would potentially result in a reduced availability of these sensibly priced products. In some cases, the increased costs may be so significant as to deter some credit unions from offering these products altogether.

Reduction in Number of Available Loans

While the reduction in the number of loans available in a rolling six-month period from three to two may appear to be de minimis, NAFCU and our member credit unions believe any limitation on the ability of credit unions to serve their members is unreasonable. The CFPB dismisses these concerns in its outline, stating: "The restriction on the number of loans in a six-month period could have an impact on the revenue of federal credit unions that make these loans; the bureau believes these impacts would not be substantial." This statement neither provides a clear rationale nor does it contain any reasonable justification for the decrease in available loans. Yet, the reduction represents one less opportunity for a credit union to assist a member in need. In such cases, the impact is substantial to the member, who may be left with few options outside of falling behind on bills or borrowing money from unregulated sources.

In addition, many short-term, small-amount loans conducted by credit unions are offered strictly as a service for the benefit of members, not as profit centers. For example, a NAFCU member reported the typical net income on a PAL loan is barely above \$20 and additional limitations will likely force this credit union to discontinue its program. These loans provide credit unions with a significant opportunity to work with the member in order to get them back into traditional financial products and away from the predatory actors. The potential decrease in the number permissible loans within a six-month period would certainly create challenges for credit unions and the result will likely be fewer short-term, small-dollar loans available to consumers from credit union lenders.

From a consumer perspective, decreasing the number of PAL loans available to the borrower within a rolling six-month period may have unintended consequences. NAFCU has received feedback indicating that limits on the number of PAL loans available to a borrower sometimes results in that borrower increasing his or her loan amount to greater than their immediate financial need in an effort to create a safety net for unexpected expenses. Under NCUA's three loan limit, a consumer has less pressure to follow that type of borrowing behavior. However, if the Bureau were to move forward with one less loan for the member to "rely on," then it is likely maximization of borrowing would be reinforced. NAFCU is concerned the CFPB's limitation on PAL loans runs the risk of creating an incentive for consumers to borrow in greater amounts on their first short-term, small-amount loan.

Payment collection restrictions will be overly burdensome.

The CFPB is also considering limitations on a lender's ability to collect payment from a borrower on a payday loan. Specifically, lenders would be required to provide advanced written notice prior to any attempt to collect payment from a consumer's checking, savings, or prepaid account. In addition to the notice requirement, the Bureau is also considering limiting the number of unsuccessful collection attempts that a lender can make to two consecutive attempts before the lender would be required to obtain a new payment authorization from the borrower.

An advanced notice requirement before a lender is permitted to collect a payment on a payday loan is likely to prove unworkable and cost-intensive. NAFCU believes these requirements are inappropriate as borrowers are typically provided detailed repayment terms at the time of origination and the costs associated with advanced written notices are likely to outweigh any benefits to the consumer.

The Bureau should use its Section 1022 authority to exempt credit unions from the payday rulemaking.

NAFCU and our members believe that exempting credit unions from rulemakings intended for unscrupulous actors would result in significant, immediate regulatory relief that would allow credit unions to better serve their members. To date, however, the CFPB has not used this exemption authority to the best of its ability in order to provide meaningful exemptions for credit unions. The relationship between the credit union and its member is based on fairness and responsible practices. Therefore, subjecting credit unions to rules aimed at bad actors only results in encumbering their ability to serve their members.

Consumer Financial Protection Bureau

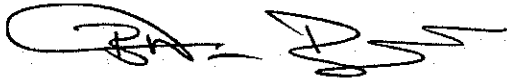
April 11, 2016

Page 4 of 4

As the Bureau pursues its rulemaking agenda related to payday lending and others, NAFCU and our members urge the CFPB to keep in mind its broad legal authority under Section 1022. We also hope to maintain a dialogue with you on this important topic and we would greatly appreciate an opportunity to meet and have an in-depth conversation on the important economic and regulatory issues facing credit unions and their members in the financial services market today and how the CFPB can better address credit union concerns in its rulemakings.

We look forward to meeting with you in the near future as your schedule permits. If you have any questions or need additional information, please feel free to contact me by telephone at (703)-842-2215, or Alexander Monterrubio, NAFCU's Director of Regulatory Affairs at (703) 842-2244 or amonterrubio@nafcub.org.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Dan Berger". The signature is stylized and somewhat cursive, with a large initial "B" and "D".

B. Dan Berger
President & CEO