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National Association of Federally-Insured Credit Unions

April 10, 2018

The Honorable Jeb Hensarling
Chairman
House Financial Services Committee
United States House of Representatives
Washington, D.C. 20515

The Honorable Maxine Waters
Ranking Member
House Financial Services Committee
United States House of Representatives
Washington, D.C. 20515

Re: Tomorrow's hearing to receive the CFPB semi-annual report

Dear Chairman Hensarling and Ranking Member Waters:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only trade association exclusively representing the federal interests of our nation's federally-insured credit unions, I write today in conjunction with tomorrow's hearing to receive the Consumer Financial Protection Bureau's (CFPB) semi-annual report to Congress. NAFCU and its members are pleased to see Acting Director Mick Mulvaney's early efforts to bring some changes to the Bureau, including a focus on its statutory role, and we are hopeful that these changes can help lessen the growing regulatory burden on credit unions by focusing the Bureau's efforts on bad actors.

During the consideration of financial reform, NAFCU was concerned about the possibility of overregulation of good actors such as credit unions, and this is why NAFCU was the only trade association to oppose the CFPB having authority over credit unions. Unfortunately, many of our concerns about the increased regulatory burdens that credit unions would face under the CFPB have proven true over the last eight years.

While NAFCU has a number of concerns with several Bureau rules, the following is a summary of the most impactful on credit unions. We look forward to working with the Committee and the new leadership at the Bureau to address these issues and help provide credit unions real regulatory relief.

Increased Use of Exemption Authority

Since the enactment of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act), over 1,500 federally-insured credit unions have been forced to close their doors or merge with other credit unions. That amount represents over 20 percent of the industry, and this rate of loss has only increased since the creation of the CFPB. A large majority of those credit unions that have closed or merged were small in asset size, and as such, could not afford to comply with all the rules promulgated by the CFPB. Therefore, it is incumbent upon the CFPB to provide some degree of regulatory relief for community institutions that cannot afford to comply with complex rules, and would otherwise be forced to stop offering services to members.

Although the Bureau already provides for some exemptions based on an entity's asset size, such as the qualified mortgage (QM) rule, NAFCU strongly believes that the Bureau can do more, such as increase the exemption threshold, or consider exemptions based on an institution's characteristics and activities.

For example, on October 26, 2017, the Office of Financial Research (OFR), led by a Director that was appointed during the previous administration, published a report that supports NAFCU's long-held stance that size does not equal risk. The report, "Size Alone is Not Sufficient to Identify Systemically Important Banks," found that the asset size of an institution is insufficient to determine riskiness. Rather, the report asserts that a multi-factor test that examines the nature and activities of the institution is a better indicator of risk.

We believe that the CFPB must do more to provide exemptions to credit unions under its authority in Section 1022 of the Dodd-Frank Act and we would ask the Committee to encourage Acting Director Mulvaney to do so.

Unfair, Deceptive, or Abusive Acts and Practices

Since the enactment of the Dodd-Frank Act, NAFCU has worked to seek clear, transparent guidance from CFPB on its expectations for credit unions under the law. Of special concern are those areas of the law, such as a call for a focus on unfair, deceptive, or abusive acts and practices (UDAAP), that provide few or no specific directives for implementation and for which neither CFPB nor the National Credit Union Administration (NCUA) has provided any specific guidance. Meanwhile, CFPB has traditionally regulated through enforcement action in this area. While we are pleased to see the new leadership of the Bureau moving away from that approach, NAFCU believes that additional Dodd-Frank guidance—articulating clear supervisory expectations—is necessary to ensure credit unions have the information they need to ensure their operations are safe, sound, and reflective of the spirit and letter of the law governing them.

Further, UDAAP-based enforcement actions have created uncertainty regarding the operation of powers explicitly conferred on credit unions by the *Federal Credit Union Act* (FCU Act). These include federal credit unions' statutory lien authority, a power explicitly granted to federal credit unions by Congress in Section 107(11) of the FCU Act and Section 701.39 of NCUA's Rules and Regulations, and federal credit unions' right to limit or suspend services, as explicitly permitted by NCUA's model bylaws. While the statutory lien in particular may be superseded by other federal or state law, the CFPB has not issued regulations or directives implementing its UDAAP authority, effectively curbing the powers granted to federal credit unions by the FCU Act and as implemented by NCUA, without any scope or notice. Essentially, the CFPB has reserved the right to determine that operation of these powers in compliance with NCUA's regulations may still be considered unfair, deceptive or abusive according to the judgment of the CFPB.

Debt Collection

NAFCU remains concerned that rulemakings by the CFPB regarding first-party debt collection will be burdensome and onerous for credit unions. In the past, the CFPB has failed to account for unique aspects of federal credit unions, including the rights granted by the FCU Act to both credit unions and their members. For example, unlike bank customers, credit union members have procedural rights

regarding expulsion under Section 118 of the FCU Act. Further, federal credit unions are granted the power to impress and enforce the statutory lien when a member is delinquent on a loan. These rights are conferred by Congress and should be carefully considered when any debt collection regulation applicable to credit unions is drafted.

Qualified Mortgages

Many of NAFCU's members have decided to extend only mortgages that meet the definition of safe harbor "qualified mortgage" as they are concerned that they will not be able to sell non-qualified mortgages and are worried about the legal and regulatory risks associated with extending non-qualified mortgages. Due to the hesitance of lenders to extend non-qualified mortgages, NAFCU is concerned that many otherwise qualified borrowers will not be able to obtain mortgages.

NAFCU believes the definition of qualified mortgage must be revised in a number of ways to reduce the enormous negative impact the rule undoubtedly has on credit unions and their members, in particular the debt-to-income (DTI) threshold (43% of the total loan) and the inclusion of affiliate fees in the calculation of points and fees.

Mortgage Servicing

The CFPB's mortgage servicing rule has unnecessarily complicated mortgage servicing, greatly increased costs of servicing and jeopardized credit unions' established practices that center on relationships with members. NAFCU's concerns with the rule include the cost and burden related to the host of new or greatly revised periodic statement, policies, procedures and notices it requires, as well as the timing and inflexible procedural requirements related to how a credit union must deal with delinquent borrowers and take loss mitigation actions. Although the rule does exempt credit unions that service 5,000 or fewer mortgages, along with affiliates, from some of the requirements, mortgage servicing costs have nevertheless greatly increased for all credit unions.

Reputation Risk

The CFPB has encouraged consumers to utilize its public Consumer Complaint Database to disclose consumer complaints and narratives that the CFPB receives on most financial products, such as credit cards, mortgages, bank accounts and services, private student loans, other consumer loans, credit reporting, money transfers and debt collection.

NAFCU believes that the CFPB Consumer Complaint Database presents a very specific reputational risk concern for financial institutions. These complaints follow a pattern of unverified information that is given credibility by the mere fact that the CFPB is posting it on their website. There is no mechanism to ensure the complaints are fully vetted. Credit unions have unique relationships with their members and NAFCU supports resolution and investigation of valid and verified member complaints by the credit unions, but the reputation risk brought on by unverified complaints is significant and not easily mitigated. We are pleased to see Acting Director Mulvaney recently announce that the Bureau is seeking comments on the usefulness of the Consumer Complaint Database as part of an effort to seek public input on all functions of the CFPB.

Remittances

In July 2014, the CFPB finalized amendments to its Remittance Rule. Prior to these amendments, the Bureau released a series of final rules concerning remittances, all of which became effective on October 28, 2013. The regulatory burden that the Remittance Rule places on credit unions has led to a significant reduction in consumers' access to remittance transfer services. NAFCU has heard from a number of its members that, because of the rule's compliance burden, they have been forced to discontinue, or will be forced to discontinue, their remittance programs.

NAFCU members have also indicated that the compliance costs associated with the rule have had an impact on their ability to offer other services to their members. Accordingly, NAFCU continues to encourage the CFPB to expand the threshold for the safe harbor from the definition of "remittance transfer provider" in order to ensure that a meaningful safe harbor is established. While the Bureau recently solicited comments as part of the rule's five-year review, NAFCU believes that the gravity of this rule's impact warrants greater precedence.

Home Mortgage Disclosure Act Requirements

The CFPB finalized amendments to Regulation C in October 2015 that made several substantive changes to the reporting requirements under the *Home Mortgage Disclosure Act* (HMDA). The final rule, among other things, expanded the data financial institutions are required to collect and report under Regulation C. Some of the expanded data collection and reporting is driven by Dodd-Frank, which amended HMDA to require collection of certain new data points. However, the CFPB also appears to have taken this opportunity to collect significantly more data than Dodd-Frank expressly requires. In addition to expanded data collection, the final rule changed the scope of Regulation C's coverage to include most closed-end loans, open-end lines of credit and reverse mortgages secured by dwellings. Under this expansion, reporting is required on all home equity lines of credit (HELOCs).

NAFCU believes that the Bureau should limit the changes to the HMDA dataset to those mandated by Dodd-Frank. While credit unions support HMDA requirements that further the goal of ensuring fair lending and anti-discriminatory practices, NAFCU is concerned that some of the additional reporting requirements do not achieve these goals and only serve to impose significant additional compliance and reporting burdens.

Additionally, NAFCU urges an exemption from HMDA reporting for all HELOCs or, in the alternative, higher reporting thresholds for close-end and open-end loans. Recently, the Bureau finalized amendments to Regulation C that would increase the threshold for collecting and reporting data with respect to open-end lines of credit so that financial institutions originating fewer than 500 open-end lines of credit in either of the preceding two years would not be required to collect such data. However, this exemption is only in effect for a period of two years, until January 1, 2020. NAFCU strongly urges the Bureau to make this exemption permanent so that credit unions have long-term certainty.

Overdraft

NAFCU believes that any continued pursuit of data on overdraft programs by the CFPB constitutes

extraordinary regulatory overreach. Credit unions are focused on providing value to their members by offering responsible overdraft protection. In fact, NAFCU's June 2015 *Economic & CU Monitor* survey found that every respondent offered an alternative to overdraft or courtesy pay programs, with overdraft lines of credit and linked savings or money market accounts being the most popular (84.4% each). Instead, NAFCU asks that the Bureau's reform agenda indicate its intentions to not promulgate overdraft regulations.

Finally, we believe that one way to improve the CFPB would be to enact H.R.5266, the *Financial Product Safety Commission Act of 2018*. This legislation would change the leadership structure from a single director to a five member commission appointed by the President. NAFCU has long held the position that, given the broad authority and awesome responsibility vested in the CFPB, a five person commission has distinct consumer benefits over a single director. Regardless of how qualified one person may be, a commission would allow multiple perspectives and robust discussions of consumer protection issues throughout the decision making process. Credit unions and their 110 million members are greatly impacted by the actions of the CFPB and believe the operating structure of the CFPB should be as fair and transparent as possible.

NAFCU looks forward to working with the Committee and the new Bureau leadership to improve the CFPB and provide regulatory relief to credit unions. We hope that you will use this week's hearing to push the CFPB to take greater steps to provide relief to credit unions under its current authority. We thank you for the opportunity to share our thoughts with you today. If you have any questions, or if my colleagues or I can be of assistance in any way, please do not hesitate to contact me or NAFCU's Vice President of Legislative Affairs, Brad Thaler, at (703) 842-2204.

Sincerely,

Carrie R. Hunt
Executive Vice President of Government Affairs and General Counsel

cc: Members of the House Financial Services Committee