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National Association of Federally-Insured Credit Unions

July 28, 2020

The Honorable Michael Crapo
Chairman
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, DC 20510

Re: Tomorrow's Hearing on "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress"

Dear Chairman Crapo and Ranking Member Brown:

I write today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) in regard to tomorrow's hearing entitled "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress." NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve nearly 121 million consumers with personal and small business financial service products. NAFCU appreciates the Committee's ongoing oversight of the Consumer Financial Protection Bureau (CFPB) and efforts to promote financial inclusion and consumer protection. We welcome this opportunity to share our thoughts on some issues pertinent to the CFPB.

QM

First, NAFCU would like to highlight our position on the CFPB's ongoing rulemaking to revise the definition of a qualified mortgage (QM) under the ability-to-repay/QM rule in light of the scheduled expiration of the Government-Sponsored Enterprise (GSE) Patch. While the CFPB issued a proposed rule to extend the patch until the effective date of their new QM rule, the timing remains uncertain. As NAFCU has shared with Congress and the CFPB, the GSE Patch has been a key factor in credit unions' ability to lend to members of their communities, especially those of low- and moderate-income.

We would urge you to discourage the CFPB from pursuing a QM definition that uses the spread between the annual percentage rate (APR) and the average prime offer rate (APOR) as a proxy for underwriting requirements (the "APOR approach"), as proposed. As NAFCU noted in both our initial comments to the CFPB on this issue, as well as a January 21st [joint letter](#) with a coalition of consumer groups and financial services trades, we support: (1) the continued use of a modified debt-to-income (DTI) ratio in conjunction with certain compensating factors, which could be used in the underwriting process and would provide guidance to creditors on their use; and (2) significant changes to Appendix Q to rely on more flexible and dynamic standards for calculating income and debt. We also have a concern that the APOR approach could ultimately not be the best option for consumers. Above all, we think maintaining access to affordable and sustainable mortgage credit should be a key objective of this rulemaking, and we ask the Committee to help enforce this message to the CFPB.

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CFPB Commission

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, including the current leadership of the agency, a commission would allow multiple perspectives and robust discussion of consumer protection issues throughout the decision-making process. Additionally, a commission helps ensure some continuity of expertise and rulemaking. The current single director structure can lead to uncertainty during the transition from one Presidential administration to another. The U.S. Supreme Court highlighted this fact when earlier this year it released a decision in *Seila Law v. the Consumer Financial Protection Bureau* that found the firing of the single director only for “just cause” to be unconstitutional. It is with this in mind that we urge Congressional action on legislation to transform the structure of the CFPB from a single director to a bipartisan commission, such as S. 3990, the *Financial Product Safety Commission Act of 2020*, which is pending before the Committee.

RESPA Flexibilities

As borrowers exit forbearance, credit unions are seeking to transition borrowers back into a paying status that the borrower can afford. The GSEs have created a deferral program to assist in this process, and the CFPB has issued a temporary exception to Regulation X which implements the *Real Estate Settlement Procedures Act* (RESPA). However, not all borrowers will be able to qualify for this deferral program and other options, such as disaster flex modifications, may be necessary. While the GSEs do not require complete paperwork to exercise these disaster options, current regulations require that extensive paperwork be obtained anyway. RESPA should contain an exception to unnecessary and burdensome regulations for disaster-related programs that move delinquent borrowers into current status. This will allow credit unions to work with their members quickly and without being encumbered by paperwork that the credit union and the GSEs do not require to offer these options. We ask the Committee to encourage the CFPB to insert an exception in Regulation X for the reasons mentioned above.

Modernization of the E-SIGN Act

As we have written to Congress previously, the *Electronic Signatures in Global and National Commerce Act* (E-SIGN Act) was passed nearly 20 years ago and generally allows electronic signatures and documents to carry the same legal weight as hard copy or paper documents. At a time when social distancing has become paramount to the health and safety of credit union members, employees, and their families, credit unions are discovering that some of the E-SIGN Act’s outdated provisions have become a burden. Over 90 percent of NAFCU members responding to a survey noted challenges in getting documents signed in light of the pandemic. Congress needs to modernize provisions in the E-SIGN Act to help credit unions better meet the needs of members, while respecting social distancing requirements. To that end, we support S. 4159, the *E-SIGN Modernization Act*, which aims to streamline how consumers consent to receiving electronic documents like bank statements, account information, and contracts.

We have also previously requested that the CFPB adopt a presumptive consent framework to facilitate electronic delivery of disclosures. We asked the CFPB to do this by amending all of its rules to allow financial institutions to deliver electronic disclosures without having to confirm the consumer’s ability to receive documents electronically when the consumer initiates the transaction using an online service. Additionally, we think the Bureau should clarify that a financial institution or a third party acting on its

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behalf that obtains this presumptive consent once may rely on it in the future for all subsequent related transactions. We encourage the Committee to ask the CFPB to explore the merits of this framework while S. 4159 makes its way through the legislative process.

NAFCU would also like to reiterate our support for Director Kraninger's efforts to provide financial institutions with regulatory certainty and targeted relief, while focusing the CFPB's efforts on bad actors. Credit unions have a long history of providing affordable and responsible financial services to their members and were not responsible for the predatory lending practices that led to the financial crisis. Nonetheless, the credit union industry has been greatly impacted from the onslaught of post-crisis financial regulation.

In the last decade, over 1,500 federally-insured credit unions have been forced to close their doors or merge with other credit unions, which amounts to more than 20 percent of the industry. A large majority of those credit unions that closed or merged were small in asset size, and as such, could not afford to comply with all the rules promulgated by the CFPB. NAFCU appreciates the CFPB undertaking a review of its rules and hopes to see more relief targeted at community institutions. Many credit unions cannot afford to comply with complex rules and would otherwise be forced to stop offering services to members. Although the CFPB already provides for some exemptions based on an entity's asset size, NAFCU strongly believes that the CFPB can do more, such as increasing transaction-based thresholds, or considering exemptions based on an institution's characteristics and activities. NAFCU asks that the Committee encourage the CFPB to utilize its authority in Section 1022 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* to provide targeted relief for credit unions while still ensuring its rules regulate bad actors.

We appreciate your leadership and ongoing focus on issues important to credit unions, and we look forward to continuing to work with the Committee and the CFPB on these topics. Should you have any questions or require any additional information, please do not hesitate to contact me or Janelle Relfe, NAFCU's Associate Director of Legislative Affairs, at 703-842-2836.

Sincerely,



Brad Thaler
Vice President of Legislative Affairs

cc: Members of the Senate Banking Committee