

June 19, 2018

Acting Director Mick Mulvaney  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

Re: Agency/Docket Number: Docket No. CFPB-2018-0011 -- Request for Information Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities

Dear Acting Director Mulvaney,

The 44 undersigned consumer, community, civil rights and legal services groups submit these comments in response to the Consumer Financial Protection Bureau ("CFPB")'s Request for Information ("RFI") regarding its adopted regulations and new rulemaking authorities.

Overall, we support the CFPB's adopted regulations and urge the agency not to revisit any of them at this time, including the regulations governing various aspects of the mortgage lending process, remittances and prepaid accounts. The agency invested considerable time and effort in research, outreach, and consideration of public input in formulating these regulations. No regulation is perfect and the agency balanced many competing interests. We note that there were numerous suggestions from consumer organizations that the agency did not follow and many accommodations the agency made to industry concerns, including some that we opposed. Nonetheless, these regulations should have time to work and the agency should assess them through the regularly scheduled review process.

We do urge the CFPB to repeal the regulation permitting pre-account opening fees that are used to evade the credit card fee harvester provisions of the Credit CARD Act.

The CFPB has announced a rulemaking on debt collection addressing communications and disclosures. Our top priorities are to urge the CFPB to limit collector calls to one call a week, to require collectors to obey an oral request to stop calling, and to prohibit collection of time-barred debt. The agency should not use this rulemaking to give abusive collectors a get-out-of-jail-free card that insulates them from liability.

### **1. Objections to the CFPB's Request for Information Process**

We must first note our objections to the burdensome RFI process. The amount of time and attention required to adequately address the CFPB's numerous RFIs on a multitude of subjects in a very short amount of time has diverted valuable consumer advocacy and third party resources to respond to these requests. The very structure of these RFIs, the nature of many of the questions, and the fact that many focus on processes known mostly to industry actors and their lawyers, favor financial institutions with greater resources at their disposal, and we are gravely concerned about any attempts to weaken consumer protection through this process.

The CFPB has ignored our request for an extension of time to respond to this particularly burdensome RFI and the one on inherited regulations. These two RFIs require us to comment on dozens of regulations on many different subjects running many hundreds if not thousands of pages in length. Doing so barely a week after responding to a series of other RFIs has been especially difficult.

These problems have prevented us from responding in more detail, seeking more input or signatories, or publicizing the comment opportunity more widely. The CFPB must not take the limited number of comments from the public as indicative of a lack of broad objections to changes the CFPB might make that would weaken its role in effectively protecting the consumer public.

## **2. Adopted Mortgage Regulations**

The regulations that the CFPB has adopted in the mortgage area were undertaken at the direction of Congress and in response to a severe foreclosure crisis. Fundamental problems in every aspect of the mortgage market spread to the entire economy and harmed individuals and businesses alike. Reckless, unfair and abusive practices were rife throughout the mortgage process from marketing to origination to servicing. Those practices did immense damage to countless consumers, while helping bring on a financial and economic meltdown in which tens of millions of Americans lost homes, jobs, assets, savings and economic security. Responsible businesses large and small also suffered from the damage created by irresponsible companies.

Below we summarize briefly the important regulations that the CFPB has adopted in the mortgage area that we urge the CFPB to retain.

### ***Mortgage servicing (Regulations X and Z)***

The 2013 Servicing Rule under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) and the 2016 Mortgage Servicing Final Rule have made a significant, positive impact in the lives of homeowners by providing better access to loan information and by helping to prevent avoidable foreclosures. The rules require fair and common sense procedures surrounding force-placed insurance, servicing transfers, and review of borrowers for loss mitigation. The rule has helped align the incentives of servicers with investors, homeowners, and communities. 70% of consumer advocates who responded to a survey stated that the new rules have increased the frequency of homeowners being properly evaluated for loss mitigation.

The CFPB should reject calls by the mortgage industry to preempt state servicing and foreclosure laws that give greater protection to consumers than RESPA. RESPA does not preempt such laws and the CFPB does not have the authority to do so. Current Regulation Z and the official interpretation implement the balance between state and federal regulation of mortgage servicers as Congress intended. These provisions should be retained in their current form and assessed through the regularly scheduled review process.

### ***Know-before-you-owe disclosures (TILA/RESPA Integrated Disclosures)***

The know-before-you-owe rule provides consumers essential information when shopping for mortgages, combining in a single form the disclosures required by the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). Integrating the requirements of two different statutes was a challenge, and the new form is a major improvement that helps consumers understand the key terms of their mortgages and helps them comparison shop. The provisions limiting deviance from estimated disclosures and providing final disclosures three business days before closing prevent bait-and-switch tactics and enable borrowers to check for errors or surprises. The disclosures were finalized after extensive testing. Piecemeal revision of these rules would be a mistake, as they were carefully crafted, their requirements are interdependent, and the market has invested considerable effort in creating compliance systems. They should be reviewed only on the regular review schedule.

### *Loan originator compensation, escrows and appraisals*

The limits on loan originator compensation contained in the Dodd-Frank Act and in the CFPB's rule are important consumer protections that have fundamentally improved the mortgage market and reduced the incentives of mortgage originators to benefit themselves financially by placing borrowers in more expensive loans. Most importantly, the rule does not permit a loan originator to be compensated based on the terms of a mortgage loan or a proxy for the terms of the loan (other than compensation based on a fixed percentage of the loan amount). The rule has helped eliminate predatory compensation practices that fueled the financial crisis. The rule should remain fully intact. This is especially critical with high-cost and higher-risk loans. Thus, we urge the CFPB to draw the exemption required by section 107 of Public Law No. 115-174 for certain employees of manufactured home retailers as narrowly as possible to protect homeowners and the market.

The CFPB's escrow rule implemented the Dodd-Frank Act requirement to establish a five-year minimum period during which escrows must be established and maintained for higher-priced mortgages. The CFPB also implemented a statutorily-permissible exemption to the escrow requirement for creditors operating in rural or underserved areas. Escrow accounts protect consumers by ensuring that they have funds for recurring homeownership-related expenses, such as property taxes and insurance premiums. These provisions should be preserved in order to maintain the ability for homeowners to keep up with their mortgages while meeting related obligations. While section 108 of Public Law No. 115-174 expands the small creditor escrow exemption for creditors with at least one loan in a rural or underserved area, to protect homebuyers and taxpayers the CFPB should not go beyond the statutory mandate.

In partnership with five other federal regulatory agencies, the CFPB adopted the Higher-Priced Mortgage Loans Appraisal Rule in 2013 and adopted additional exemptions in 2014. The appraisal rule helps to ensure that mortgage loans are properly and accurately collateralized. This protects lenders, by ensuring that loans are adequately secured, and borrowers, by preventing them from borrowing more than their homes are worth. The lack of adequate regulation in the appraisal market was a significant factor causing the housing market crash and the appraisal rule must not be weakened. Section 103 of Public Law 115-174 expands the exemptions under this rule to any loan in a federally designated rural area with a balance of less than \$400,000. In order to prevent undersecured loans, no further expansions should be provided.

### *Ability-to-repay and qualified mortgages rules*

The ability-to-repay and qualified mortgage (QM) rules under TILA were promulgated to implement the new mortgage requirements adopted by Congress in 2010. The ability-to-repay provisions ensure that borrowers who are taking out mortgages or refinancing are likely to be able to afford the loan. These provisions were adopted in light of the reckless “no doc” and other shoddy practices that led many people to lose their homes and ruined their financial lives. The QM rules provide streamlined compliance provisions for loans that do not carry risky attributes, such as interest-only payments or exploding interest rates.

These rules have restored sense to the market by ensuring that lenders have an incentive to make loans homeowners can afford and to make safe loans. The CFPB has balanced the need for robust affordability requirements with flexibility for smaller institutions. While section 101 of Public Law No. 115-174 expands the small creditor exemption for loans held in portfolio, the CFPB should implement this requirement as narrowly as possible, in order to preserve access to affordable mortgage loans. Any other changes to the QM rule should similarly be narrowly crafted and should follow a regular process of notice and comment to consider the impact of any changes both on responsible underwriting that supports consumers and the costs of compliance and access to credit.

### *High-cost mortgages*

In the Dodd-Frank Act, Congress expanded the Home Ownership and Equity Protection Act to protect American homeowners from the most reckless loan products the lending industry created in the years leading up to the foreclosure crisis. The CFPB faithfully implemented these provisions regarding greater coverage of high-cost loans and limits on features of such loans, including balloon payments, modification and deferral fees, prepayment penalties, late fees, acceleration clauses, and financing of points and fees. These rules steer lenders away from high-cost loans with dangerous or abusive features and encourage less expensive and safer loans.

### **3. Prepaid Accounts Rule**

The CFPB’s prepaid account rule is an important, common sense rule that provides clear fee disclosures, access to account information, fraud and error protection, and protection against inappropriate and dangerous overdraft and credit features for this rapidly growing market. The rule closes a gap in protections and gives consumers greater confidence to turn to prepaid accounts. The CFPB wisely drafted the rule to adapt to an evolving market by not limiting the rule to physical plastic cards and by including newer mobile and fintech transaction accounts that hold consumer deposits.

Consumers have waited a long time for the rule and industry has invested a lot of effort into compliance, originally scheduled for April 1, 2018 and now for April 1, 2019. The CFPB should not revisit the rule and definitely should not weaken any of the provisions, especially those governing overdraft fees.

The CFPB should, however, issue guidance to ensure that any “checkless checking” accounts that are outside the scope of the rule are limited to safe bank accounts, without overdraft fees, that are offered directly by financial institutions, not evasion products offered by nonbank prepaid companies.

#### **4. Remittances Rule**

The CFPB enacted the remittance rule at the direction of Congress to implement the provisions of the Dodd-Frank Act. The remittance rule provides important protections for consumers, promoting the transparency necessary to make good financial decisions for themselves and their families. Generally, the remittance rule guarantees that individuals will be told the exchange rate and exactly how much will be received upon delivery, as well as the time for delivery. For workers who are supporting their families in another country, it is vital that they be provided accurate information about the full cost of using remittance services to send money to their loved ones so that they can make the best financial choice. The rule also enables remittance senders to resolve disputes, errors and unauthorized transfers.

The CFPB should not revisit or weaken the remittance rule. We also urge the CFPB to ensure that (a) consumers receive accurate information regardless of the provider used to send funds abroad, and (b) the promises made to consumers about costs and times for funds availability are enforced. Consumer complaints to the CFPB indicate that too often consumers believe that they are sending enough money to pay for an important bill, but deceptive exchange rates and transaction costs eat away at the actual amount that their family receives.

#### **5. Credit Card Fee Harvester Rule Governing Pre-Account Opening Fees**

The 2009 Credit CARD Act contains a “fee harvester card” provision that capped fees in the first year of a card at 25% of the credit line. The provision is aimed at abusive low-balance cards that advertised low APRs but came with numerous fees that dramatically increased the cost while cutting into available credit. One company, First Premier Bank, began evading the rule by charging pre-account opening fees and then sued the CFPB over the regulation. To settle the litigation, the CFPB changed the rule. First Premier now charges \$170 in up-front fees, with a purported APR of 36%, on a card that claims to offer \$300 in credit but in fact net of the fees offers only \$130 in available credit. However, when the CFPB changed the rule it overlooked its broader rulemaking authority under TILA. It should now use that authority to restore the original rule as enacted by the Federal Reserve Board.

#### **6. New Rulemaking Authority Over Debt Collection**

Abusive debt collection practices have been a problem for decades. Debt collection is consistently near the top--and usually at the top--of complaints at the Federal Trade Commission and now at the CFPB. Violations of the 1977 Fair Debt Collection Practices Act (FDCPA) remain routine. The advent of the debt buyer industry has exacerbated old problems and created new ones, as many consumers now face collection activities against the wrong person, for the wrong amount, by the wrong party, or for debt that is so old that records are lost or the consumer cannot be legally sued.

Congress gave the CFPB new authority to write regulations under the FDCPA. Any such rules must stay faithful to the statutory purposes, including: “to eliminate abusive debt collection practices” and “to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged.”

As the CFPB undertakes a rulemaking concerning communications, it must focus on ending harassing communication, protecting consumer privacy, and increasing consumer control over collection communications. In particular, the CFPB should:

- Limit calls to one a week (with up to three attempted calls);
- Require collectors to obey the consumer’s oral request to stop calling;
- Ensure that newer communication technologies respect privacy, do not abuse or harass, and comply with the FDCPA;
- Prohibit the collection of time-barred debt or adopt very strict limits that prohibit suits on “revived” debt and limit communications to writings that include clear disclosures that the consumer cannot be sued.

Any new disclosures should build upon existing FDCPA disclosures and be tested for comprehension by the least sophisticated consumer.

The CFPB should reject calls from some in the collection industry for a “right to cure” violations of the FDCPA before consumers may exercise their rights under the statute. There is no right in the statute to have one free bite at violating the Act, there is no authority to add one, and to do so would encourage violations and harm both consumers and law-abiding collectors.

## **7. Electronic disclosures and other information**

The CFPB asks whether aspects of the adopted regulations are “incompatible or misaligned with new technologies, including by limiting providers’ ability to deliver, electronically, mandatory disclosures or other information that may be relevant to consumers ...”

We support clear, well-designed and tested electronic disclosures and information for consumers who elect to receive information in that format, while noting that it is important that information be provided in a form that consumers can keep and some transactions are too complex to be adequately understood on mobile devices. We oppose removing the choice of paper disclosures, statements, records or other information for consumers who prefer to receive information on paper.

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Thank you for considering our comments.

Yours very truly,

Allied Progress

Americans for Financial Reform  
Arkansans Against Abusive Payday Lending  
Arkansas Community Organizations  
Atlanta Legal Aid Society, Inc.  
Brooklyn Coop Federal Credit Union  
California Reinvestment Coalition  
Center for NYC Neighborhoods  
Center for Responsible Lending  
Consumer Action  
Consumer Federation of America  
East Bay Community Law Center  
Empire Justice Center  
Florida Alliance for Consumer Protection  
Georgia Watch  
Heartland Alliance for Human Needs & Human Rights  
Interfaith Center on Corporate Responsibility  
Jacksonville Area Legal Aid, Inc.  
Kentucky Equal Justice Center  
LAF Chicago  
Legal Aid Society of the District of Columbia  
Legal Services NYC  
Maryland Consumer Rights Coalition  
Mississippi Center for Justice  
Mobilization for Justice Inc.  
NAACP  
National Association of Consumer Advocates  
National Center for Law and Economic Justice  
National Community Reinvestment Coalition  
National Consumer Law Center  
National Fair Housing Alliance  
New Yorkers for Responsible Lending  
North Carolina Justice Center  
People's Action Institute  
Public Justice Center  
Tennessee Citizen Action  
Texas Appleseed  
THE ONE LESS FOUNDATION  
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UnidosUS (formerly NCLR)  
Virginia Poverty Law Center  
West Virginia Center on Budget and Policy  
Woodstock Institute  
World Privacy Forum