WOODSTOCK INSTITUTE

Advancing Economic Security and Community Prosperity

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:

Woodstock Institute and the undersigned organizations submit these comments in response to the Consumer Financial Protection Bureau (CFPB)'s Request for Information (RFI) regarding its rulemaking processes. In its first several years of operation, the CFPB's rulemaking process has been inclusive, transparent, evidence-based and comprehensive. It is essential to preserve this robust process.

1. About Woodstock Institute

Woodstock Institute is a leading nonprofit research and policy organization in the areas of equitable lending and investment, wealth creation and preservation, and access to safe and affordable financial products and services. We work locally and nationally to create a financial system in which lower-wealth persons and communities of color can safely borrow, save, and build wealth so that they can achieve economic security and community prosperity. Our key tools include: applied research; policy development; coalition building; and technical assistance.

In recent years, Woodstock played a leading role on reforms regarding payday and other high-cost lending, currency exchanges/check-cashers, debt collection, public fines and fees, children's savings accounts, and retirement savings programs for private sector workers. Woodstock also plays a leading role in helping to ensure banks invest in and provide safe and affordable services to low- and moderate-income communities, communities of color, and older people.

2. Objections to the CFPB's Request for Information Process

This RFI is one of a litany of RFIs that have been issued under the direction of Acting Director Mick Mulvaney. The number of RFIs and their frequency is overly burdensome to small not-for-profits like Woodstock. Industry, with its greater resources in terms of staff and otherwise, is far more capable than the consumer advocacy community in developing thorough responses to this flood of RFIs. The amount of time and attention required to try to address the flood of RFIs has diverted scarce nonprofit resources that might otherwise be spent on other issues such as the gutting of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) or the multitude of Congressional efforts to repeal agency rulemakings through the Congressional Review Act. The information provided through this RFI process will be inherently skewed in industry's favor simply because it has the necessary resources to create an official record reflecting its position. Accordingly, at the end of the day, the official record that will have been established through this process is not an accurate reflection of the variety and force of opinions on the many issues covered by the RFIs. We anticipate the need to raise objections insofar as this process is used to back off enforcement, lessen oversight, or gut the CFPB itself.

3. Let Mortgage Rules Stand As Is

Overall, we support the CFPB's adopted regulations and urge the agency not to revisit any of them at this time. 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.

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.

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 ruin 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.

<u>High-cost mortgages</u>

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.

<u>Mortgage servicing (Regulations X and Z)</u>

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 on 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. Seventy percent 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 from 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 protects 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. 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 areas with a balance of less than $400,000. In order to prevent undersecured loans, no further expansions should be provided.

4. Let Prepaid Rule Stand As Is

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.

5. Proceed to Develop Strong Debt Collection Rules

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.

Sincerely,

WOODSTOCK INSTITUTE

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EQUAL VOICE ACTION
HEARTLAND ALLIANCE FOR HUMAN NEEDS & HUMAN RIGHTS
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