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November 28, 2022

Comment Intake
Mortgage Refinances and Forbearances RFI
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20052

Re: Request for Information Regarding Mortgage Refinances and Forbearances (Docket ID CFPB-2022-0059)

Dear Sir or Madam:

The Credit Union National Association (CUNA) represents America's credit unions and their more than 130 million members. On behalf of our members, we are writing regarding the recent Request for Information Regarding Mortgage Refinances and Forbearances (Refinance and Forbearance RFI).¹

Background

The Bureau is concerned about the availability of refinance opportunities for consumers with smaller loan balances, which disproportionately affects Black, Hispanic, low- to moderate-income consumers, and consumers in rural areas, who are more likely to own homes with lower market values.² In order to better understand what barriers may prevent these consumers from benefiting from falling interest rates and what interventions could lower those barriers, the Bureau has issued the Refinance and Forbearance RFI.³ The Bureau requests information on the benefits and limitations of several policy ideas to address these concerns, as well as on alternative options to help consumers access lower interest rates.

In 2021, refinance originations totaled \$2.7 trillion.⁴ While this represents a drop from \$2.8 trillion in 2020, it is still a significant increase over previous years.⁵ Despite this continued strong showing in refinance activity, by the end of 2021 servicer retention of refinancing borrowers had climbed 9 percentage points over the past five quarters.⁶ As of the 4th quarter of

¹ *Request for Information Regarding Mortgage Refinances and Forbearances* (Refinance and Forbearance RFI), 87 Federal Register 58487 (Sept. 27, 2022).

² Refinance and Forbearance RFI, 87 Fed. Reg. at 58488.

³ *Id.* at 58489.

⁴ Black Knight, Mortgage Monitor, January 2022 Report, p. 14, available at https://www.blackknightinc.com/wp-content/uploads/2022/03/BKI_MM_Jan2022_Report.pdf.

⁵ *Id.*

⁶ *Id.* at p. 16.

2021, refinances of portfolio retained loans were most likely to be servicers retained, and the while pricing was an important factor to retaining loans, Black Knight reports that positive customer experiences led to greater retention of these loans during 2021.⁷

However, as the Bureau noted, refinancing of smaller balance loans is less common, and this has a disproportionate affect on Black, Hispanic, and low- to moderate-income borrowers.⁸ Credit unions are not-for-profit financial cooperatives with a statutory mission to promote thrift and provide access to credit for provident purposes. Credit unions’ interest in their members’ financial well-being and advancing the communities they serve takes on paramount importance. As such, credit unions are willing to make smaller balance loans than other financial institutions:

Average Loan Amount Refinanced - HMDA 2021			
	Credit Unions	Banks	Non-Bank Mortgage Lenders
African American	\$197,875	\$235,567	\$260,807
Non-White Hispanic	\$224,190	\$261,073	\$293,738
Low/Moderate Income*	\$142,180	\$162,370	\$213,941

* < 80% of MSA Median. Source CUNA analysis of HMDA data.

Credit unions are willing to make smaller loan balances, driving down the average loan amount refinanced for Black, Hispanic, and low- to moderate-income borrowers compared to banks and non-bank mortgage lenders.⁹ The average credit union-refinanced loan for a Black household is nearly 16% smaller than the average refinanced by a bank and nearly 25% smaller than one refinanced by non-bank mortgage lenders.¹⁰ The average credit union-refinanced loan for a Hispanic household is 13% lower than a bank-refinanced mortgage and 23% lower than one refinanced by non-bank mortgage lenders.¹¹ A credit union-refinanced mortgage to a low- or moderate-income household is 12.5% lower than one refinanced by a bank and 33% lower than one refinanced by non-bank mortgage lenders.¹²

⁷ *Id.* at 17.

⁸ Refinance and Forbearance RFI at 58488.

⁹ 2021 HMDA Data, CUNA Analysis.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

Further, for these borrowers, credit unions are likely to have a higher percentage of their total refinancing in loans under \$100,000 and a smaller average loan amount than banks and non-bank mortgage lenders.¹³

Mortgage Refinancing with Loan Amounts Less Than \$100k - HMDA 2021			
	Credit Unions	Banks	Non-Bank Mortgage Lenders
African American			
Average Loan Amount	\$64,397	\$68,435	\$79,099
% of Total Refinancing	23.6%	15.4%	5.8%
Non-White Hispanic			
Average Loan Amount	\$63,514	\$73,354	\$79,278
% of Total Refinancing	19%	12%	3%
Low/Moderate Income*			
Average Loan Amount	\$64,586	\$69,344	\$78,907
% of Total Refinancing	35%	27%	9%
<i>* < 80% of MSA Median</i>			

Credit unions exist only to serve their members, and the relationship between credit unions and their members is fundamentally stronger than the relationship other financial services companies have with their customers. However, credit unions have reported that when it comes to helping their members seeking to obtain or refinance smaller balance loans, there are several significant barriers that they face, many of which were enumerated by the Bureau in its RFI.¹⁴

Barriers to Refinancing

Some significant barriers to refinancing smaller balances that the Bureau did not explicitly mention are associated with the secondary market and investor requirements, particularly those of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Mortgage Loan Corporation (Freddie Mac), collectively, the government-sponsored enterprises (GSEs), and the high-cost loan requirements of Regulation Z. Oftentimes, refinancings of smaller balance loans also correlate with certain risk factors triggering loan-level pricing adjustments (LLPAs), reducing or eliminating any cost savings that might be enjoyed by virtue of the lower rate.

The GSEs change loan-level pricing adjustments when a loan has any of a variety of characteristics. Many of these characteristics are commonly found in connection with low-income borrowers and refinances. These include: low credit scores, manufactured home, cash-out refinances, condominiums, and loans made under Fannie Mae’s HomeReady program or Freddie Mac’s Home Possible program. In particular, the LPPA for lower credit scores are more likely to

¹³ 2021 HMDA Data, CUNA Analysis.

¹⁴ Refinance and Forbearance RFI at 58488.

affect Black and Latino borrowers who, on average, have lower credit scores than White borrowers.¹⁵

It should be noted that the Federal Housing Finance Administration (FHFA) recently made a change which could positively impact the role of LLPAs and the prevalence of lower credit scores among Black and Latino families. The FHFA recently announced the validation and approval of the FICO 10T and VantageScore 4.0 models for use by the GSEs.¹⁶ These models purport to be more inclusive and accurate,¹⁷ and may result in an increase in the credit scores of creditworthy, lower-income families, helping to close the gap for Black and Latino families. Implementation of this change is a multiyear effort, and so it will take time to determine the ultimate success of this effort.

However, it should also be mentioned that the FHFA recently announced a change to its LLPAs. The change including the elimination of the fees on HomeReady and Home Possible loans, loans for first time homebuyers with low-income below the area median income (AMI), and certain Duty to Serve requirements.¹⁸ While these changes may benefit first-time homebuyers who are low-income, it will not likely positively affect refinances. Further, the announcement also indicated that LLPAs related to cash-out refinances will increase.¹⁹ For low-income borrowers seeking to access equity in their home by refinancing a smaller balance mortgage in order to lower the rate on other debt, such as credit card balances, this will likely make refinancing even more expensive.

Credit unions have no control over these LLPAs, they are determined by the FHFA and the GSEs and are the same for larger and smaller balance loans. Layering these fees on top of other fixed closing costs will often eliminate any benefit the borrower might hope to enjoy as a result of the refinancing at a lower rate. Further, where loan balances are low, these hard costs may push a particular transaction into meeting the definition of a “high-cost loan” under Regulation Z,²⁰ triggering a variety of additional operational and compliance costs for the credit union.²¹

Some credit unions report that as a matter of policy, they calculate their minimum mortgage loan balance requirements to avoid a potential high-cost determination given the credit union’s fixed lending costs, among other goals. These credit unions often simply do not have the servicing capacity to meet the rule’s additional requirements, particularly for loans that have smaller balances and will not generate sufficient revenue to cover the operational costs of these programs. However, this does not mean that these credit unions do not assist these borrowers; only that the

¹⁵ Freddie Mac, *Equitable Housing Finance Plan* (June 2022), available at <https://www.freddiemac.com/about/pdf/Freddie-Mac-Equitable-Housing-Finance-Plan.pdf>.

¹⁶ *FHFA Announces Validation of FICO 10T and VantageScore 4.0 for Use by Fannie Mae and Freddie Mac* (Oct. 24, 2022), available at <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Validation-of-FICO10T-and-Vantage-Score4-for-FNM-FRE.aspx>.

¹⁷ Fact Sheet: FHFA Announcement on Credit Score Models (Oct. 24, 2022), available at <https://www.fhfa.gov/Media/PublicAffairs/Documents/CS-Fact-Sheet-2022.pdf>.

¹⁸ *FHFA Announces Targeted Pricing Changes to Enterprise Pricing Framework* (Oct. 24, 2022), available at <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Targeted-Pricing-Changes-to-Enterprise-Pricing-Framework.aspx>.

¹⁹ *Id.*

²⁰ See 12 C.F.R. § 1026.32(a)(1).

²¹ See 12 C.F.R. §§ 1026.31(c), 1026.32(c)-(d), and 1026.34(a)-(b).

regulatory requirements related to high-cost loans create an environment where refinancing small balance loans are particularly uneconomical for both the borrower and the credit union.

Alternatives to Refinancing

Many credit unions expressed that when rates come down and members express interest in refinancing with the goal of lowering their monthly payment, it is sometimes, but not always, the result of financial tightening on the member's end. If a member is experiencing financial strain, oftentimes their credit score may be significantly lower than it was at the time of origination, triggering additional LLPAs on the loan. If a 30-year loan is nearing maturity, a borrower's circumstances and income may have changed significantly over the past decades. Further, as discussed, the intention to take cash-out might also trigger LLPAs. With these additional loan costs, a borrower may have to make payments for years just to pay down the costs. The transaction may well no longer be financially beneficial to the member or responsible for the credit union as a whole.

In these instances, the credit union is far more likely to discuss other solutions for the member that are more supportive of their overall financial well-being, rather than simply refinancing the mortgage loan and putting them into a high-cost mortgage loan. These other solutions are typically tailored to the individual member's financial situation, but might include modification of the mortgage to lower the monthly payment within investor parameters, offering the member a temporary forbearance if their income is temporarily disrupted, or establishing a low-interest personal loan or second mortgage to consolidate credit card or other debt to reduce the member's financial pressures. Oftentimes, particularly with lower balances, doing a traditional refinance of a mortgage loan to take advantage of lower rates simply does not make sense for borrowers.

Targeted and Streamlined Refinances

In terms of what a more streamlined process might look like, credit unions pointed again to GSE and investor requirements. In particular, investor processes with less overhead, less work, and less verification means that credit unions can offer lower prices. This includes regulatory requirements and obtaining the qualified mortgage safe harbor.

Required appraisals is one of the largest fixed costs with mortgage loans. Credit unions report that the desktop appraisals under the GSEs is often just as expensive, and the regulatory requirements are more complicated. Some credit unions identified that GSE acceptance of the use of automated valuation models (AVMs) for less costly homes may help bring down fixed costs. However, the Bureau and other Federal agencies are also working on quality control requirements for AVMs,²² and it seems possible that these economic benefits of AVMs may be eliminated or some credit unions may have to make a risk-based decision not to use AVMs if credit unions are required to pay third-parties to validate these AVMs or be liable for their fair lending implications.

Credit unions point to the qualified mortgage (QM) safe harbor²³ as a point of difficulty. With smaller balance loans, the qualified mortgage points and fees test can become very burdensome

²² See Small Business Advisory Review Panel on Automated Valuation Model Rulemaking (Feb. 23, 2022).

²³ See 12 C.F.R. § 1026.43(e).

on these transactions. Even with a buy down loan where a borrower could pay discount points, with a small balance there is simply a limited amount you can buy down to make the points and fees work within the QM definition. The Bureau might consider reinstating the Temporary GSE QM rule for certain loans where it wishes to streamline refinances. Alternatively, where a borrower seeks to refinance a loan that met the QM definition, is current in a loan, and seeks a lower interest rate which will lower the payment, the Bureau should consider grandfathering the refinance a QM designation.

One credit union further suggested that the QM rule could include a small balance exception that employs a net tangible benefit test similar to the test that used to be employed by Fannie Mae on high loan-to-value refinances.²⁴ Fannie Mae stopped purchasing these loans in 2021 due to the revocation of the Temporary GSE QM rule.²⁵ That test focuses on whether the borrower is benefiting from the refinance, rather than a simple points and fees calculation and reflects several of the consumer benefits in question 3 of the RFI.²⁶ The net tangible benefits test requires that the refinance accomplish at least one of the following benefits: lower monthly mortgage payments; lower interest rates; shorter loan term; or more stable mortgage product.²⁷

Without achieving the QM designation, the likelihood that the loan can be sold is very limited, and both credit unions and the examiners from the National Credit Union Administration (NCUA) can only tolerate so much risk being held in these portfolios. Aligning the QM rule requirements with the GSE requirements streamlines the process significantly, makes use of already existing and implemented processes within credit unions, and, regardless of whether the loan is sold or held in portfolio, it provides credit unions with a safety value in the event the loan does need to be sold to manage interest rate or other risk.

Potential New Products to Facilitate Refinances

Credit unions disagree that one-way adjustable-rate mortgages (ARMs) are new products. Several credit unions reported extremely positive experiences with one-way ARMs, or, alternatively, with the use of step-down mortgage loans. For credit unions that have a portfolio mix and are able to access investments to counteract the safety and soundness risk, they speak very positively about these programs.

However, not every credit union is able to implement a one-way ARM mortgage loan program. There are currently very little or no opportunities to sell these types of unique products on the secondary market. The loan requirements of the GSEs and other secondary market investors often do not include flexibilities for more creative or unusual products to meet borrowers where they are. As referenced, without an outlet for selling these loans, credit unions are forced to keep them on their books.

²⁴ Fannie Mae, High LTV Refinance Option (last accessed Nov. 22, 2022), available at <https://singlefamily.fanniemae.com/originating-underwriting/mortgage-products/high-ltv-refinance-option>.

²⁵ Fannie Mae Lender Letter LL-2021-11 (May 26, 2021).

²⁶ Refinance and Forbearance RFI at 58491.

²⁷ *Supra* 13.

The largest barrier for credit unions to do more of these types of loans is the ability to sell them on the secondary market, rather than managing the risk associated with these loans on their own books. By and large the GSEs will not accept these loans as it is extremely complex to model and plan to retain capital against the interest rate risk associated with a significant concentration of these loans.

While many credit unions prioritize their memberships needs and happily keep these less traditional mortgages on their books, they are limited in their ability to do so under safety and soundness considerations such as interest rate risk, asset/liability management (ALM) practices, concentration risk, risk-based capital requirements, and more. These programs can pose some significant complications for ALM programs in a falling rate environment. Credit unions that have significant exposure to interest rate risk often cannot offer one-way ARM mortgage loans.

More often, credit unions offer step-down mortgage loans that allow the borrower an opportunity to step-down a mortgage rate at some point during the life of the loan. Others offer mortgages with a contractual right to voluntarily modify the interest rate on the loan for a flat fee of a couple hundred dollars. Because the interest rate on these mortgages will only change once during the life of the loan, these represent far less risk to credit unions. ALM programs are able to create meaningful estimation of the loan's predicted revue over a 30-year term, allowing the credit union to more easily manage its risk. Increasingly, credit unions are exploring the possibility of automating this process using technology platforms such as RateReset, a credit union service organization that automates the interest rate modification process.

These programs obviously benefit their members tremendously by allowing them to enjoy lower rates without the cost of refinancing. It also benefits the credit union by allowing it to hold onto mortgages that were originally made in a high-interest environment, rather than the member potentially going to another financial institution in the market to refinance the loan. Credit unions report that in addition to being a member service, the contractual step-down opportunity serves a business purpose—it is a fast and comparatively inexpensive alternative to the member refinancing the loan elsewhere. It keeps good assets at the credit union.

Ultimately, how these programs should be structured and whether a rate adjustment should be performed automatically and when, are questions with very clear and very powerful affects on a financial institution's ALM program and overall safety and soundness. Whether a program can be offered and how it should be designed is not just a question for the lending department, it must be answered taking the credit union's individual investments, liabilities, and strategic plan into account. Individual credit union's membership may have specific needs with regard to housing or other products or services that may prohibit a credit union from establishing a program in a particular manner. Credit unions must retain discretion to design these programs as they are able.

There are strong market incentives for credit unions to make these loans when they can. Many credit unions reported an awareness of the risk of losing high-quality loans to other lenders in the marketplace in a falling rate environment. There is significant interest in technological platforms like RateReset to ease the burdens around rate decreases. Drawing regulatory parameters for these products would only increase the compliance burdens and costs surrounding these products, reducing their economic benefit. It may also prevent credit unions from designing products that

work for that individual credit unions' balance sheet and interest rate risk exposure. The Bureau should not let perfect be the enemy of good in relation to these loan features, it should allow credit unions to serve their members while maintaining the overall safety and soundness of the credit union.

Forbearances and Other Loss Mitigation

Regarding forbearance and other loss mitigation options, credit unions again distinguished between loans sold to the GSEs and loans held in portfolio. Streamlined modification and forbearance programs designed by the GSEs were relatively straightforward to apply to service retained loans. With reference to modification programs under the Home Affordable Modification Program (HAMP) or Home Affordability Refinance Program (HARP), credit unions report that the programs were often difficult to work with. Documentation requirements were often onerous and duplicative. Further, with the benefit of time it appears these have generally not performed well.

Because credit unions often retain loans that have unique features or pose more risk than the secondary market is positioned to accept, the application of forbearance or loan modifications programs to portfolio loans was more difficult to operationalize. Credit unions report that during the pandemic, they were most successful modifying portfolio loans when they were able to design and offer creative solutions based on the balance owing and how long the horizon of the loan was. This ability to be creative helped credit unions manage their individual liquidity concerns and risk parameters.

There is not a regulatory need to define circumstances under which loss mitigation should be offered automatically or engineer credit unions' responsiveness to their membership. Credit unions are already attuned to market forces that affect their members, for example, many credit unions that serve government employees have short-term loan programs that come into effect if the government stops being funded to cover income shortfalls. Earlier this year, the Bureau issued a Request for Information Regarding Relationship Banking and Customer Service expressing a desire to foster an environment where credit unions can meet customers' needs through strong customer service, responsiveness, and care.²⁸

Credit union balance sheets, staff time, and operational costs are inherent material limitations that credit unions must manage. Creatively designing solutions to meet members needs in light of current market conditions experienced by both the member and the credit union is the definition of relationship banking. If the Bureau attempts to define circumstances where specific offers must be made to all members or specific classes of members, it effectively ties credit unions' hands and holds their balance sheet captive. This would represent the complete opposite of relationship banking and would pose concerns for the financial health of the housing finance sector at large.

The Bureau should not consider determining limitations on specific modification or forbearance terms or features that can be offered to borrowers. These must be left to credit unions to determine based on the individual's financial situation, the alternatives available to the credit union, and

²⁸ *Request for Information Regarding Relationship Banking and Customer Service*, 87 Fed. Reg. 36828 (Jun. 21, 2022).

market conditions. Further, the short-term effects of modifications and forbearances made under the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act)²⁹ are just now being studied. The medium- and long-term effectiveness of these efforts still have still not been revealed. The Bureau absolutely should not attempt to broaden or replicate these programs until it has been able to meaningfully study the ripple effects for the programs.

Conclusion

Thank you for the opportunity to respond to the Bureau's request for information. CUNA is happy to provide additional information or resources if needed. If you have questions or require additional information related to our feedback, please do not hesitate to contact me at (202) 503-7184 or esullivan@cuna.coop.

Sincerely,

A handwritten signature in cursive script that reads "E. Sullivan".

Credit Union National Association

²⁹ Pub. L. No. 116-136 (2020).