Heartland
Credit Union Association

November 7, 2016

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1275 First Street, NE
Washington, DC 20002

Re: Request for Information on Payday Loans, Vehicle Title Loans, Installment Loans, and Open-End Lines of Credit, Docket No. CFPB-2016-0026

Dear Ms. Jackson:

On behalf of the 2.3 million credit union members we represent, the Heartland Credit Union Association (HCUA) appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB or Bureau) Request for Information (RFI) on Payday Loans, Vehicle Title Loans, Installment Loans, and Open-End Lines of Credit.

At stated in our previous comment letter on this topic, HCUA strongly recommends that the CFPB exempt credit unions from its proposed rule. The CFPB has requested additional information concerning: (1) potential consumer protection concerns with loans that fall outside the scope of the Bureau's Concurrent Proposal but are designed to serve similar populations and needs as those loans covered by the proposal; and (2) business practices concerning loans falling within the Bureau's Concurrent Proposal's coverage that raise potential consumer protection concerns that are not addressed by the Concurrent Proposal. Further, the CFPB seeks comment from the public about consumer lending practices for the purpose of increasing the Bureau's understanding of and support for potential future efforts, including but not limited to future rulemakings, supervision, enforcement, or consumer education initiatives.

HCUA believes that both covered and non-covered loans are negatively impacted by the proposed rule. Consumer friendly credit union products that fall outside of the scope of what is considered a covered loan could still be impacted if credit unions are swept into the proposed rule. Many small dollar loans, and other credit union products and services such as automobile refinance loans, will not be directly impacted in every situation by the proposed rule. However, all credit union lending is affected because of the overly broad scope of this rule. The complexity alone associated with the proposed rule for credit unions has caused some to reconsider whether they want to participate in this market, if any loan they offer could be covered. Additionally, some credit unions have loans that would be covered loans and others that would not be, but they cannot take on the compliance burden and resource drain of having separate systems, processes, training, and forms for different types of consumer friendly alternatives being subject to several different regulatory schemes.

Credit union products have no pattern of harm to consumers and alternatively, they are recognized as providing a safe option for consumers. Federal credit unions are already subject to an 18 percent interest rate cap except for Payday Alternative Loans (PAL), and state-chartered credit unions are already offering their consumer friendly alternatives in compliance with state and federal law. As such, there are many loans that may not be covered loans. However, even the loans that will not be covered loans could be curtailed if credit unions have to take on unnecessary compliance burdens to prove they are not covered loans, or determine whether they could be.

The CFPB in the proposal questions whether ancillary products can lead to consumer protection concerns. The CFPB's proposed rule for small dollar loans could lead to credit unions limiting their offering of these loans. By including voluntary products within the cost of credit, the rule could potentially limit credit unions' ability to offer these products and consumers' ability to access them. The "All-In" *de facto* rate cap could impermissibly affect the ability to offer ancillary products when consumers refinance automobile loans.

Consumers and credit union members that may be helped the most by ancillary products may also be those with low-or-modest incomes who have limited options if an unplanned event should occur. A consumer with fewer resources who purchases debt cancellation, Guaranteed Auto Protection (GAP) insurance, and/or credit life insurance during an automobile refinance may these products the most. For example, GAP insurance ensures that credit union members are protected when a vehicle is stolen or totaled in an accident. Without this option, a member could owe more than the car is worth and find they are in a difficult financial situation if something happens to the car, particularly if they need to purchase a replacement. Obtaining a new car may be the member's only option to get to work or drive their kids to school. Not all members, particularly those of modest means, can easily access available funds to replace a car, and insurance products were created for that very reason.

Congress has not provided the CFPB the authority to regulate insurance products. If research was conducted and showed any evidence of harm to the public as a result of voluntary ancillary products, this should be addressed through insurance laws. When credit unions are offering insurance products, they are fully licensed as required by law and acting pursuant to that authority. Many of the insurance products have rebating requirements, price limits, set rates and specific forms regulated by a financial institution's prudential insurance regulator. These voluntary products are not a cost of credit, but instead are a completely separate insurance product that can even be paid for on a monthly basis.

The prepaid final rule establishes new requirements and limitations stemming mainly from the Truth in Lending Act and the Credit Card Accountability Responsibility and Disclosure Act (CARD Act). The CFPB's treatment in the final rule of an overdraft service as consumer credit is extremely troubling and ignores years of statutory precedent. Overdraft services are a choice consumers can opt in to for additional funds, and credit union members have overwhelmingly provided feedback that their members want this option. HCUA strongly urges the CFPB to proceed carefully in this area, particularly in regards to ignoring statutory precedent, which could serve to unnecessarily burden yet another choice for financially distressed consumers.

We strongly encourage the CFPB to consult with state and federal regulators and not create policies that duplicate or conflict with current law, particularly statutory directives from Congress. The Federal Credit Union Act (FCUA) and National Credit Union Administration (NCUA) guidance materials already address many debt collection issues, and the CFPB should not make ideological policy decisions changing established statutory rights. It is troubling that the CFPB is attempting to engage in debt collection policymaking that conflicts directly with feedback from the prudential regulator, who examines credit unions for safety and soundness.

We believe that the CFPB's proposed rule specifically attempts to limit credit unions' statutory right to set off. Furthermore, the CFPB has recently engaged in enforcement actions that could change or limit credit unions' ability to collect on small dollar or any other kind of loans. As such, the CFPB is already

engaging in policymaking affecting credit union debt collection for all loans including covered loans, even though it has not specifically done so yet through a formal debt collection notice and comment period. Specifically, in a recent enforcement action against a credit union, the CFPB labeled it an unfair practice when it froze members' account access and disabled certain electronic services after consumers became delinquent. Several NCUA legal opinion letters conflict with this CFPB finding and specifically do not preclude a federal credit union from restricting the availability of certain services (e.g., ATM services, credit cards, loans, share draft privileges, preauthorized transfers, etc.) to members provided there is a rational basis for doing so, and as long as the members are aware of the policy. Creating new requirements through enforcement actions, particularly when they conflict with longstanding statutory precedent, is extremely concerning to credit unions.

HCUA is concerned that the CFPB's proposed rule will inhibit consumer friendly innovation from state-chartered, as well as federal, credit unions in this market. The CFPB's proposal virtually ignores that state-chartered credit unions have constructed different small dollar loan programs to meet the unique needs of their memberships that vary in size, make-up, and geographic location. Instead, the CFPB makes the very inaccurate assumption that state-chartered credit unions can all morph their programs into certain models that include additional, and unnecessary, new requirements. This lack of understanding of how credit unions serve their members in different ways is extremely problematic and extremely harmful to consumers if state-chartered credit unions are forced to abandon their small dollar loan programs (a concern discussed in full in CUNA's comment).

We suggest that the CFPB propose a rule narrowly tailored and focused on the consumer abuse in the nonbank lending markets. Credit unions should be exempt from the overly broad rule that has been proposed.

As always, we appreciate the opportunity to review this issue. We will be happy to respond to any questions regarding these comments.

Sincerely,

Brad Douglas
President/CEO