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National Association of Federally-Insured Credit Unions

January 3, 2022

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

RE: 2022-2026 Strategic Plan

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Bureau of Consumer Financial Protection's (Bureau or CFPB) Strategic Plan for fiscal year 2022-2026 (Strategic Plan). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 127 million consumers with personal and small business financial service products. NAFCU appreciates the Bureau's work in setting the stated goals and objectives to carry out the agency's mission, as well as evaluating and adjusting the Strategic Plan as necessary.

Goal #1: Implement and enforce the law to ensure consumers have access to fair, transparent, and competitive markets that serve consumers' needs and protect consumers from unfair, deceptive, and abusive practices, and from discrimination

To carry out its first goal, the Bureau sets forth the objective to issue rules and guidance implementing federal consumer financial law through various strategies. NAFCU appreciates the Bureau's commitment to carrying out this objective by pursuing transparent and evidence-based approaches to developing or revising regulations; addressing outdated regulation; and providing financial institutions with guidance, tools, and other resources to implement regulatory compliance.

Compliance costs continue to skyrocket since the passage of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank). According to NAFCU's *2021 Federal Reserve Meeting Survey*, overall compliance burdens have increased over 75 percent in the past five years. And over 94 percent of respondents expect overall compliance burdens to increase in the next five years. Moreover, 73 percent of respondents expect to add staff in the next three years to better manage current and anticipated compliance burdens. Removing or revising outdated regulations will achieve greater savings in both compliance costs and credit union resources and allow credit unions to focus on serving their members. Additionally, numerous federal consumer financial protection laws were implemented before the advent of technology available today. Revising and

removing outdated and conflicting regulations may better align with industry practices and consumer expectations, while simultaneously ensuring consumer safety.

Previously, the Bureau's Taskforce on Federal Consumer Financial Law released reports providing recommended improvements to consumer financial protection laws; however, these reports were invalidated due to the Bureau's failure to comply with the *Federal Advisory Committee Act* (FACA). The Bureau should properly convene a Taskforce on Federal Consumer Financial Law to again review the regulations and provide comprehensive recommendations. In addition, the Bureau should provide the Credit Union Advisory Council (CUAC) the opportunity to also provide comprehensive recommendations on outdated and obsolete regulations. NAFCU supports the Bureau's objective to provide guidance, tools, and resources as this will assist in mitigating overall compliance costs. Lastly, NAFCU supports the Bureau's strategy of issuing guidance on the use of alternative data, machine learning, and artificial intelligence so that credit unions may utilize technology to remain competitive while ensuring consumer protections are in place.

In protecting consumers from unfair, deceptive, and abusive acts or practices (UDAAP), the Bureau should initiate a rulemaking to define the "abusiveness" standard, or, alternatively, reinstate its previous policy statement clarifying the standard. Credit unions are concerned that the rescission of the policy statement will ultimately result in a "regulation by enforcement" approach. Keeping UDAAP over-broad and vague creates a compliance challenge for credit unions and significant resources are expended to monitor and track the Bureau's supervision and enforcement actions as the standards evolve. As Director Chopra testified before the House Committee on Financial Services during the October 27, 2021, semi-annual review of the Bureau, our industry works better when rules are clear. NAFCU reiterates the need for a rulemaking regarding the "abusiveness" prong and clarification on the factual basis for an abusiveness violation, or reinstatement of the previous policy statement.

While NAFCU agrees that the Bureau should focus supervision and enforcement resources on those actors that pose the greatest harm to consumers, we remain concerned that the Bureau anticipates meeting this goal with the objective of focusing resources on the size of the institution. NAFCU firmly believes that size does not equate to risk and encourages the Bureau to divert supervision resources to those actors or products that cause the greatest harm to consumers and are in violation of federal consumer financial laws. Moreover, the Bureau should expand use of its exemption authority under section 1022 of Dodd-Frank to alleviate regulatory burden. Given the demonstrable burden the consumer financial regulations impose on credit unions, especially smaller, less complex institutions, the Bureau should consider appropriate exemptions based on the institution's characteristics and activities. Although the Bureau provides limited exemptions based on an institution's size, NAFCU strongly believes that the Bureau can provide meaningful relief by considering additional exemptions.

Goal #2: Empower consumers to live better financial lives, focusing on traditionally underserved people

At their core, credit unions focus on empowering their members to live better financial lives, with an emphasis on serving underserved members and communities. NAFCU members provide vital financial literacy and education programs. The Bureau highlights various strategies in carrying out this goal, including an objective to identify new opportunities to improve access to affordable credit through policy changes, implementation of effective practices, and promoting fair lending compliance and education, including special purpose credit programs (SPCPs). NAFCU members strive to provide robust access to credit and continue to identify opportunities to provide credit to underserved members. The Bureau could assist in carrying out this objective by providing guidance or an advisory opinion for SPCPs focusing on not-for-profit entities. Existing guidance in the form of an advisory opinion focuses on SPCPs for for-profit entities. Although Regulation B allows for SPCPs for not-for-profit entities, additional regulatory clarity may incentivize credit unions to leverage this program to provide access to credit for underserved members, furthering the Bureau's stated goal.

An area where the Bureau can empower consumers to live better financial lives is small-dollar lending. Credit unions meet their members' demands for short-term, small dollar loans, while ensuring accessibility, safety, and affordability. Often, credit unions offer short-term, small-dollar loans as a service to members with the associated fees solely covering the expenses of loan origination and servicing. Regulations should be tailored to eradicate bad actors in the market without inhibiting credit unions' ability to provide safe and affordable loans. As Director Chopra highlighted in his responses to his confirmation hearing, the National Credit Union Administration's (NCUA) Payday Alternative Loan (PAL) program has been beneficial in providing consumer access to credit. Accordingly, the Bureau should expand the safe harbor exemption in its Payday Rule to include all current and future iterations of the NCUA's PAL rule.

Goal #3: Inform public policy with data-driven analysis on consumers' experiences with financial institutions, products, and services

One of the strategies in achieving this goal includes assessing competition and innovation in the consumer financial marketplace. Given Director Chopra's initial focus on creating more opportunities for competition, NAFCU urges the Bureau to create a fair landscape between credit unions, fintechs and other companies engaged in financial services, where regulations, supervision, and consumer protections apply to all actors in the marketplace. This is especially important given the increased complexity of error resolution when a credit union is asked to review a transaction involving a nonbank payment service provider. NAFCU members report countless instances in which payment service providers do little to assist in investigations where Regulation E responsibilities are shared between the provider and the credit union. This example highlights the need for fostering a fair landscape where consumer protections apply to all actors in the marketplace.

The CFPB should also ensure that P2P service providers are providing sufficient information for financial institutions to reasonably investigate alleged token errors, as described in the Bureau's Fall 2021 Supervisory Highlights. Currently, chargeback requests through credit card companies stemming from peer-to-peer (P2P) platforms do not include "token" information and there is no way to request that within the chargeback system. The CFPB should encourage network providers to share information with financial institutions and fintechs such as tokens, internet service provider (ISP) information, and device information so that credit unions can efficiently determine whether an electronic fund transfer was unauthorized.

NAFCU encourages the Bureau to consider standards for ensuring that nonbank payment service providers are responsive to credit union and other financial institution requests related to Regulation E investigations. A more structured framework will incentivize coordination among all payment system participants. Similarly, the Bureau should ensure that lending activities performed by fintechs and others are subject to the same fair lending, disclosure and other regulations and enforcement that credit unions are. Given the expanding marketplace, technology and marketing innovations, there is significant risk for consumers in engaging with organizations not subject to these regulations. Such organizations also weaken the overall financial system, by reducing trust and drawing resources away from regulated organizations.

From a broader perspective, the Federal Financial Institutions Examination Council should establish a coordinated approach to identify supervisory gaps and consumer compliance risks that demand legislative or regulatory attention. On March 24, 2021, NAFCU wrote to the Bureau urging the agency to initiate a rulemaking and exercise supervisory authority over fintech companies utilizing its "larger participant" authority. As fintech and other companies have grown over time, they have become larger participants in the consumer financial services marketplace and are not subject to the supervision of a federal financial regulator, allowing them to skirt important consumer protections. NAFCU urges the Bureau to foster a regulatory environment that promotes competition and responsible innovation but minimizes regulatory arbitrage.

Conclusion

NAFCU appreciates the opportunity to comment on the Bureau's Strategic Plan, and the agency's commitment to evaluate and adjust as necessary. NAFCU strongly encourages the Bureau to remove and revise outdated and obsolete regulations to assist in mitigating overall compliance costs and burdens. NAFCU encourages the Bureau to reinstate its previous policy statement on UDAAP and provide guidance on SPCPs for not-for-profit entities. Lastly, NAFCU urges the Bureau to initiate a rulemaking and exercise its supervisory authority over fintech and other companies engaging in financial services activities utilizing its "larger participant" authority. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2249 or kschafer@nafcu.org.

Bureau of Consumer Financial Protection

January 3, 2022

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Sincerely,

A handwritten signature in black ink, appearing to read "Kaley Schafer". The signature is fluid and cursive, with the first name "Kaley" being more prominent than the last name "Schafer".

Kaley Schafer

Senior Regulatory Affairs Counsel