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**National Association of Federally-Insured Credit Unions**

November 2, 2020

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street S.W.  
Washington, D.C. 20554

**RE: In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (CG Docket No. 02-278) (FCC 20-140)**

Dear Ms. Dortch:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Federal Communications Commission's (FCC or Commission) Notice of Proposed Rulemaking regarding the rules and regulations implementing the TCPA. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 121 million consumers with personal and small business financial service products. NAFCU would like to reiterate its support of the FCC's efforts to establish and implement exemptions to the TCPA's consent requirement for important information that consumers need regarding their credit union accounts. Information about fraudulent activity, data breaches and available protections, and money transfers is important and timely information members need immediately, and these exemptions facilitate that communication.

**Informational Calls Exemptions**

NAFCU is supportive of the FCC's proposal to not limit the number of calls made under the exemption. Credit unions need to place calls or texts to members advising that branches are closing or reopening in response to the number of COVID-19 cases in their community, informing on the availability of forbearance or other government programs for those affected, or otherwise providing helpful, non-commercial information to their membership. As we have seen since March, circumstances can change quickly, and government programs or relief may become available unexpectedly. In particular, limiting the amount of calls that can be made on a monthly basis may severely curtail a credit union's ability to get important information to its members in a timely manner.

If the FCC includes an opt-out provision, it is important that the opt-out be limited to the opt-out method provided by the bank or business. Credit unions should be permitted to offer any clearly defined and easy-to-use opt-out methods which fits their current operations and provides a consistent method for consumers to withdraw their consent to be contacted.

## Financial Institutions Exemption

The exemption for financial institution calls absolutely remains in the public interest. The COVID-19 pandemic has increased the amount of business activity consumers perform on their computers and phones. The uncertainty created by the pandemic, increase in remote working, and the increase in online and mobile transactions has led to an explosion in fraud and cybersecurity attacks. On May 28, 2020, the number of complaints received by the Federal Bureau of Investigation's Internet Crime Complaint Center surpassed the number of complaints received in all of 2019.<sup>1</sup> Similarly, IT and security professionals have reported an increase in security threats and cyberattacks since the outbreak of the coronavirus, leading Reed Smith to refer to COVID-19 related security attacks as "possibly the largest-ever security threat."<sup>2</sup> Under these circumstances, NAFCU urges the FCC to consider what additional tools it can give credit unions to ensure that members are immediately notified when their information has been used fraudulently, breached, or otherwise compromised.

As these exemptions are clearly in the best interests of consumers and credit unions, NAFCU asks the FCC to expand the exemption to provide for at least 6 communications over a one-week period immediately following a transaction flagged for fraud or a data breach. This would provide much-needed flexibility to contact members on these time-sensitive issues. With just three communications, a credit union could only place two calls and send one text message or one of the other permutations available within this limitation. Within that time frame, a member's credit card balance could be maxed out or their debit card account depleted. The member is stranded without access to funds and the credit union is left helpless, yet responsible for refunding the consumer. Such expenses could be avoided with more opportunity to establish live contact with the consumer.

Much as changed since 2015, when the FCC's Order was issued establishing the three calls in three days limitation. Because of the need for social distancing, most consumers have moved to conducting banking transactions through mobile applications on their phone. Consumers are far more familiar with receiving this kind of information through their phone than they were half a decade ago. To the extent that these important messages, which are critical to consumers well-being, represents any kind of privacy invasion, these texts do not represent the same degree of interruption they may have previously. Allowing more frequent messages over a longer period increases the likelihood that a credit union will receive the response necessary to protect the consumer as quickly as possible, reducing the loss and inconvenience to consumers.

Further, the text limit of 160 characters is too short. As each text must include the name and contact information for the sender and opt-out instructions on the use of the reply "STOP," this significantly reduces a credit union's ability to clearly communicate with consumers. Depending on its formulation, this required content would consume 30-50 characters of a message. Credit unions should be permitted to provide this required content in a separate, precursor 160-character

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<sup>1</sup> Calvin A. Shivers, Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation, Statement Before the Senate Judiciary Committee, Washington, D.C. (June 9, 2020), available at <https://www.fbi.gov/news/testimony/covid-19-fraud-law-enforcements-response-to-those-exploiting-the-pandemic>.

<sup>2</sup> Cynthia O'Donoghue, Andreas Splittgerber, Philip Thomas, Howard Womersley Smith, and Katalina Bateman, Reed Smith Client Alerts (March 24, 2020), available at <https://www.reedsmith.com/en/perspectives/2020/03/coronavirus-is-now-possibly-the-largest-ever-security-threat>.

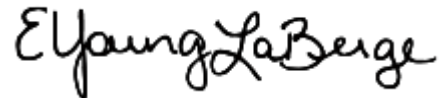
text. This would allow credit unions to provide additional information to consumers on controlling and using the automated SMS message. For example, a credit union could include “Reply HELP for help,” allowing consumers to access the full range of controls a system may offer.

NAFCU concurs with the FCC’s determination that no further conditions are necessary or warranted to ensure the financial institution exemption satisfies the requirements of section 8 of the TRACED Act. The FCC should adjust the language of the opt-out provision in paragraph 64.1200(a)(9)(iii)(G) to clarify that a consumer’s opt-out only applies to the account and category of calls at issue, and not all calls made under the exception or other unaffected accounts. The FCC adopted this construction in its 2015 Declaratory Ruling and Order<sup>3</sup> and it is important that that this remain clear in the regulatory text.

### **Conclusion**

These exemptions continue to serve consumers and the credit unions that serve them. NAFCU appreciates the opportunity to provide comments in response to the FCC’s proposed rule and urges the FCC to ensure that any conditions required by the TRACED Act do not impede the function of these exemptions. Where possible, the FCC should consider expanding the exemptions to ensure their purpose is properly met. If you have any question or concerns, please do not hesitate to contact me at (703) 842-2272 or [elaberge@nafcu.org](mailto:elaberge@nafcu.org).

Sincerely,



Elizabeth M. Young LaBerge  
Senior Regulatory Counsel

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<sup>3</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, 30 FCC Rcd 7961, 8027, para. 137 (2015).