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National Association of Federally-Insured Credit Unions

May 19, 2017

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW.
Washington, DC 20552

RE: Request for Information Regarding Use of Alternative Data and Modeling
Techniques in the Credit Process; Docket No. CFPB-2017-0005

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally-insured credit unions, I am writing in response to the Consumer Financial Protection Bureau's (CFPB or Bureau) Request for Information (RFI) regarding use of alternative data and modeling techniques in the credit process. NAFCU's comments will first provide background on the efforts of credit unions extending credit to consumers who need it most, then explain how the Bureau could leverage those efforts, concluding with an attachment that addresses several of the questions posed in the RFI.

Background

In the RFI, the Bureau states its goal to learn whether alternative data could open up greater access to credit for Americans who are currently stranded outside the mainstream credit market. The Bureau additionally would like to learn more about how it could promote the responsible use of alternative data and modeling techniques. It is interested in encouraging or enabling financial service providers to use such data and techniques to the benefit of consumers.

The CFPB notes that fair lending laws, while designed to promote equal access to credit, may actually prevent financial institutions from considering and using alternative data for minority and underserved consumers. During remarks made at a February 16, 2017 Field Hearing, Director Cordray commented that the financial industry is generally uncertain on how the CFPB would apply consumer protection laws to the use of alternative data.

NAFCU agrees that legal uncertainty is a factor that hinders access to credit, not only in the use of alternative data, but in all daily operations and credit decisions of credit unions. Ultimately, if the Bureau is seeking ways to help financial institutions go about their business with more confidence and certainty of regulatory compliance, then NAFCU believes that the CFPB should provide more clarity in interpreting consumer protection laws.

To the degree that the CFPB wants to spur the use alternative data and methodologies to increase access to credit, NAFCU believes that the Bureau could more effectively accomplish its goal by removing market uncertainties and barriers, such as ambiguous rulemakings.

Credit unions are committed to providing Americans with access to credit

Expanding access to credit is of great importance to NAFCU and our member credit unions, especially when considering the poor financial state of many Americans. As the RFI cites, 45 million Americans are credit invisible or have thin credit files. This is a manifestation of the fact that 75 percent of Americans live paycheck-to-paycheck, 47 percent cannot cover a \$400 emergency, and one-in-three do not have any retirement savings. Clearly, more should be done to provide increased access to responsible credit products and to improve the financial health of Americans. Credit unions already want to remedy these issues. Credit unions respect and seek the goals of this RFI: providing more responsible credit to consumers.

Serving over 107 million Americans, credit unions spend a significant portion of their resources and time working with members to find out which products can help members meet their credit needs, and figuring out ways to serve members that do not have a perfect credit history.

A large majority of NAFCU member credit unions already offer financial literacy classes and training. In fact, according to a recent NAFCU survey, almost 90 percent of credit union respondents spend 86 hours or more each month on matters related to financial literacy, reaching an average of 20,800 members per credit union (Figure 1).

Survey respondents identified a number of areas where they help the unbanked and underbanked. One respondent mentioned their credit unions' work with local immigrant outreach and welfare programs. Another teaches workshops at a local homeless mission. Many respondents offer credit-building loans and share accounts. When asked which programs were most impactful, many pointed to their work in local schools.

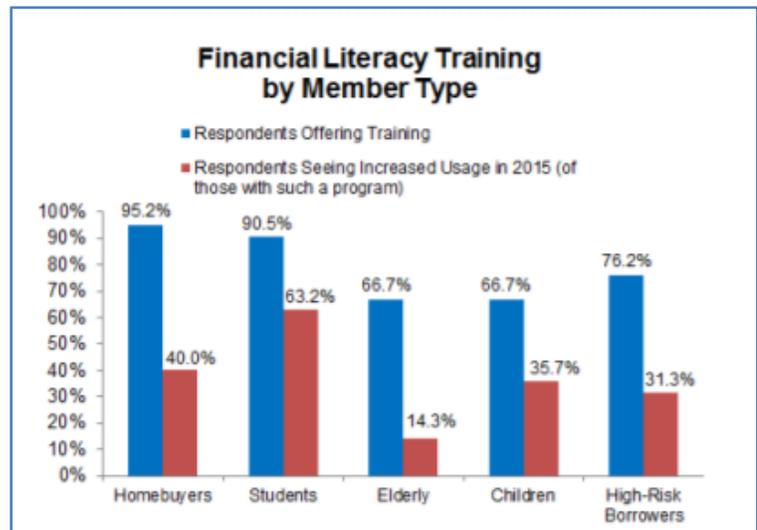


Figure 1

Clarity of existing rules – NOT creation of new rules – is the best way to enable access to credit

While we appreciate the Bureau's goals to collect information on the use of alternative data to expand access to credit, it is unclear how or whether the CFPB has the requisite statutory authority to achieve such goals. Traditionally, the Bureau has promulgated rulemakings and

interpretive guidance to achieve stated goals. On this matter, though, NAFCU would like to be extremely clear – credit unions know their members best. They are in prime position to determine the creditworthiness of a member. The Bureau should not create new rules or mandates in an attempt to "encourage" financial institutions to use alternative data to increase consumer access to credit.

Rather, NAFCU believes the best encouragement the Bureau could provide is to revisit and reform existing regulations to make it simpler for credit unions to extend credit to those that are currently forced to go to non-traditional financial service providers, such as payday lenders and high-interest online lenders.

One method of encouragement is for the Bureau to give financial institutions safe harbor from Bureau enforcement actions for general use of existing models that incorporate alternative data. Additionally, in furtherance of developing and employing alternative data and modeling techniques, a feasible strategy is for the Bureau to establish pilot programs that give financial institutions a presumptive safe harbor on activities pursued under the pilot program parameters. This would provide a degree of certainty for financial institutions as they discover and utilize new ways of underwriting consumers with little or no credit history.

Although the Bureau has created other environments intended to spur pilot programs, ie., Project Catalyst, NAFCU believes those past attempts have had limited success due to the fact that the Bureau's 'No Action' letters have been revocable, which exposes innovators to legal action. In order for a pilot program to be successful, the Bureau must commit to providing assurances and a degree of legal certainty to experimenters in this space.

NAFCU believes that another meaningful way that the Bureau can provide certainty in the marketplace is by setting clear expectations and explicit rules under its Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) authority. Without clear, bright line guidance, credit unions are often fearful of offering products that *might* be considered a violation of UDAAP, despite the fact that they might be for the greater benefit of their members. Setting clear guidance, as NAFCU has long advocated for, would go a long way in reducing the uncertainty and risk of the unknown risk for our members. This is discussed in more detail in question 20, attached below. The attachment also addresses questions 1, 2, 4, 9, 11, 13, and 15 in more detail.

NAFCU urges the agency to enable credit unions to address Americans' financial needs by granting credit unions additional regulatory flexibility. We look forward to working with the bureau to create policies that enable credit unions to develop these services. Should you have any questions, please do not hesitate to contact me at (703) 842-2249 or memancipator@nafcuhq.org.

Sincerely,



Michael Emancipator
Senior Regulatory Affairs Counsel

1. What types of alternative data are used in decisions in the credit process?

A key question for the Bureau is how people without a credit score can begin building a credit history. NAFCU has found that many credit unions already analyze a member's "cash flow," the volume of money being deposited and withdrawn every month, to help determine creditworthiness. For members without a credit history, this data is particularly useful as it does not appear on a traditional credit report. Also illustrative for these purposes are records of utility payments, rent payments, and other ongoing and recurring bills that demonstrate "cash flow," yet are not reflected in traditional credit reports.

Credit unions also may purchase aggregated information about their members' payment behavior in such areas as rent, telecom, and utilities as a means of assessing their reliability in making payments on their obligations. Such aggregated information is available through the traditional credit reporting agencies and serves as an important means to assess the likelihood of repayment among populations who have yet to establish a long or any credit history.

As NAFCU has noted in previous comment letters to the Bureau, credit unions may be better able to assess a member's creditworthiness because they "are more likely to base underwriting decisions on local knowledge and nonstandard data," and that, due to their ongoing relationships with their members, "they may have a more comprehensive understanding of their customer's financial circumstances." Similarly, because credit unions are restricted to a particular class of members, they are in a unique position to assess the impact on their members of all relevant factors.

2. For each type of alternative data identified [in question 1]:

b. Please describe any goals, objectives, or challenges that the use of this type of alternative data is designed to accomplish or address.

Credit unions work with their members to have them qualify for a loan. For some, this may include members providing documentation of timely rental payments, sometimes by requiring a letter from the landlord verifying the payment amounts and timeliness of payments. Jointly, the rental payments provide cash flow information to the underwriting decision. However, a significant challenge for our members that use this method of alternative data is reliability. Since so many credit union members are providing information through informal channels, it is difficult to determine its veracity.

The ultimate goal of our members is to produce more loans and options for members to achieve financial health. A large challenge is that there is often no formal way to verify rent payments, especially if the property manager or owner is not renting to tenants on a large-scale basis.

4. For each type of alternative data identified above, please describe whether the data are used alongside other traditional or alternative data.

For members that use non-traditional data, most use it in tandem with traditional credit reports when determining creditworthiness. Many use the non-traditional data when determining pricing for products.

9. What does available evidence suggest about the potential benefits for consumers of using alternative data?

As Director Cordray noted in his remarks during the CFPB's February 16, 2017 Field Hearing, consumers work just as hard to pay their rent as they do their monthly mortgage payments, but rent is often omitted from credit files, unlike mortgage payments, likely because rent is not viewed as "credit." But credit unions recognize that timely rent payments show the willingness and ability of someone to pay. The evidence suggests, and credit unions have determined, that the use of such "cash flow" data can help make positive credit decisions for their members.

The benefit for members is the creation of programs that depend on alternative data. For members with no credit history, these programs allow them to start building credit. Programs to help members start building credit include first time borrower program for vehicle loan, unsecured credit, closed end credit and provide a starter credit card.

There are benefits that consumers realize when credit unions use alternative data, whether the methodology is one where the consumer provides the data directly or whether the credit union obtains it from a third party. In cases where the data is received directly from the consumer, the consumer already knows where the information came from, what to do if there are inaccuracies, and where to go to resolve them. In cases where the data is obtained from a third party, the consumer would have the benefit of having a credit union consider data not available in traditional consumer reports. In addition, just like in cases where the member provides information directly, the consumer has knowledge of where the information came from, what to do if there are inaccuracies, and where to go to resolve them, in situations where alternative data is obtained from a third party.

11. What does available evidence suggest about the potential benefits for market participants of using alternative data?

In addition to looking at existing member data sources (previous behavior, etc.) in new ways, many of them are exploring additional metrics. Many of our members that use alternative data in the underwriting process acquire the information through other resources, including asking additional questions or information gathering. These efforts typically take the fashion of enhancing a potential positive credit decision as a way to say 'yes' to a member that is seeking a loan. For credit unions, the benefits of this alternative data are clear, as it is their mission to serve the financial needs of their member/owners. The use of alternative data allows them to extend credit to those members who are creditworthy while protecting the assets of the membership as a whole from risk.

13. What does available evidence suggest about the potential risks for consumers of using alternative data?

NAFCU would like to raise the potential risk that the accumulation of more data could create a tangle of information that is harder for consumers to understand and unravel. There is a possibility that the additional information will make it harder for consumers to understand their finances. In response, NAFCU points out that credit unions use considerable effort to explain all parts of a member's credit score, and particularly how other information outside a formal report, can be used to find a member to be creditworthy.

15. What does available evidence suggest about the potential risks for market participants of using alternative data?

NAFCU has heard from members that many consumers are disputing reports to "game" the system, hoping that the credit union forgets to respond to their dispute. Unfortunately, there is no limit on how many times a member can dispute online. Many "credit fixing companies" merely send form letters and members are impressed by the legalese used in these letters. However, these companies are not in any way helping the member which is unfortunate because members pay these companies money. As such, should the CFPB move forward with actions related to alternative data, it would be helpful if the agency addresses this concern as it applies to traditional consumer reports.

20. The Dodd-Frank Act prohibits unfair, deceptive, or abusive acts or practices in connection with consumer financial products or services.

a. Are there specific challenges or uncertainties that market participants face in complying with the prohibitions on UDAAPs with respect to alternative data or modeling techniques?

UDAAP-based enforcement actions have created uncertainty regarding the operation of powers explicitly conferred on credit unions by the Federal Credit Union Act. These include federal credit unions' statutory lien authority, a power explicitly granted to federal credit unions by Congress in Section 107(11) of the Federal Credit Union Act and Section 701.39 of NCUA's Rules and Regulations, and federal credit unions' right to limit or suspend services, as explicitly permitted by NCUA's model bylaws. While the statutory lien in particular may be superseded by other federal or state law, the CFPB has not issued regulations or directives implementing its UDAAP authority, effectively curbing the powers granted to federal credit unions by the Federal Credit Union Act and as implemented by NCUA, without any scope or notice. Essentially, the CFPB has reserved the right to determine that operation of these powers in compliance with NCUA's regulations may still be considered unfair, deceptive or abusive according to the judgment of the CFPB.

c. What steps, if any, can the Bureau take to help minimize the risk of UDAAPs from the use of alternative data and modeling techniques?

Since the enactment of the Dodd-Frank Act, and particularly throughout the past year, NAFCU has worked to seek clear, transparent guidance from CFPB on its expectations for credit unions under the law. Of special concern are those areas of the law, such as a call for a focus on UDAAP, that provide few or no specific directives for implementation and for which neither CFPB nor NCUA has provided any specific guidance. Meanwhile, CFPB continues to regulate through enforcement action in this area.

NAFCU believes that additional Dodd-Frank guidance—articulating clear supervisory expectations—is necessary to ensure credit unions have the information they need to ensure their operations are safe, sound, and reflective of the spirit and letter of the law governing them.