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National Association of Federally-Insured Credit Unions

June 25, 2018

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

RE: Request for Information Regarding the Bureau's Inherited Regulations and Inherited Rulemaking Authorities
(Docket No. CFPB-2018-0012)

Dear Ms. Jackson:

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 Bureau of Consumer Financial Protection's (Bureau) request for information regarding its inherited regulations and inherited rulemaking authorities. NAFCU members appreciate the Bureau's efforts to address regulatory burdens and to conduct an extensive review of its regulations. Credit unions are uniquely positioned as not-for-profit, member owned cooperatives to provide exceptional member service while maintaining consumer protections.

General Comments

Since the enactment of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank) and the creation of the Bureau, over 1,500 federally-insured credit unions have been forced to close their doors or merge with other credit unions. That amount represents over 20 percent of the industry, and equates to one credit union per day closing its doors. A large majority of those credit unions simply could not afford the cost of complying with the tidal wave of rules promulgated by the Bureau and other federal regulators. Credit unions were not the "bad actors" that led to the financial crisis and ultimately the enactment of Dodd-Frank, yet they are an industry that has felt the effects the hardest, incurring additional costs and burdens to ensure compliance.

The inherited regulations include those consumer financial protection functions previously vested in other federal agencies to the Bureau. Dodd-Frank gave the Bureau inherited rulemaking authority to prescribe rules as necessary in order to administer and carry out the purposes and objectives of the Federal consumer financial laws. The Bureau implemented these laws as interim final rules and originally made no substantive changes to the existing rules, although some amendments have been made since the interim final rules.

NAFCU has previously commented on several of these inherited regulations and urges the Bureau to look at the impact of its rulemakings on federally-insured credit unions. NAFCU specifically urges the Bureau to review and eliminate outdated requirements and those that are unduly burdensome. NAFCU believes that the Bureau should have taken into account industry testimony and the consumer-friendly nature of credit unions when they prescribed the rules implementing the inherited regulations. The Bureau missed the opportunity to tailor rules specific to the credit union industry, and therefore subjected them to a host of unnecessary regulations intended to deter bad actors.

Lastly, NAFCU suggests that the Bureau use its broad exemption authority under section 1022(b) of Dodd-Frank to exclude credit unions from certain rules. In conjunction with the transferred inherited rulemaking authority to carry out the purposes and objectives of the consumer financial laws, the Bureau was given broad exemption authority under section 1022 of Dodd-Frank to provide exemptions for small institutions from various rulemakings on a case by case basis. The inherited regulations were designed to protect consumers from unscrupulous acts by large complex financial institutions. Credit unions are not unscrupulous actors and exempting them from these regulations would provide significant regulatory relief.

Gramm-Leach-Bliley Act

The Bureau should maintain the alternative delivery method and increase the notification period for revised annual notices.

In 2016, the Bureau announced its proposed rule regarding the annual privacy notice requirement under the *Gramm-Leach-Bliley Act* (GLBA). NAFCU advocates for broad consumer protection, and an efficient and cost-effective means of keeping consumers' personal information safe given our current digital environment. An important piece of the information sharing process is providing consumers with how their information is shared with third parties. Information sharing increases the overall member service experience. The proposed rule would eliminate the alternative delivery method of annual notices, which several of our members use. Further, electronic mail is an ever increasing medium of communication and in some cases the preferred means of communication by a consumer. NAFCU remains concerned with the removal of the alternative delivery method as this provides our members with a cost effective means of communication. In addition, NAFCU is also concerned with the 60 day notification requirement for revised annual notices to members. Increasing the notification period will be more cost effective for credit unions as they could deliver revised notices with their quarterly newsletters. NAFCU suggests maintaining the alternative delivery method and increasing the notification period to 90 days.

Fair Credit Reporting Act

The Bureau should provide clear guidance on when an approved applicant may be provided with their consumer report.

The *Fair Credit Reporting Act* (FCRA) applies to NAFCU members who furnish information to a consumer reporting agency. Credit unions are adamant in avoiding legal risks, while furthering

business objectives including lending to members and opening share accounts. Credit unions use credit reports for legally permissible reasons and are aware of the outcomes of non-compliance, including exposure to legal, regulatory and reputation risks. NAFCU members remain concerned about the vague language surrounding whether or not credit unions may provide copies of credit reports used by credit unions to the consumer. No language exists in the FCRA or Regulation V that directly addresses the permissibility. The Federal Trade Commission (FTC) provided guidance on the issue but the Bureau has been silent.

Section 607(c) of the FCRA provides mandatory disclosure of a consumer report in the context of an adverse action. Therefore, credit unions must disclose a consumer report in the case of a denial. Conversely, if a consumer is approved the language of the FCRA is silent, which leads credit unions to consult their contractual agreements with credit reporting agencies as to whether or not those agreements allow disclosure.

NAFCU suggests that the Bureau issue guidance to clearly define when a credit union may disclose the consumer report used to approve an applicant. The Bureau's consumer complaint database consistently receives a high volume of complaints regarding credit reporting. Given that consumers consistently have issues with credit reporting, credit unions will likely see an increase in requests for consumer reports used in order to ensure accuracy. Credit unions will need to be armed with a regulation that clearly states that this information may be provided to credit union members in order to mitigate risks posed to both the credit union and the member.

Fair Debt Collection Practices Act

The Bureau should exclude credit unions from debt collection rulemakings.

Credit unions are not debt collectors under the *Fair Debt Collection Practices Act* (FDCPA) and thus should be excluded from any debt collection rulemaking. In the past, the Bureau has failed to account for the unique, member-oriented mission of credit unions. For example, credit unions work with their members to bring delinquent accounts current, offer signature loans at reduced rates, and adhere to the procedural rights established by the FCU Act to ensure that members are treated fairly. Credit unions exist for the primary purpose of serving their members. They work together with members in implementing payment plans, loss mitigation strategies, waiver of late fees, and other options when a delinquency occurs. The rights under the FCU Act are conferred by Congress and should be considered when any debt collection regulation applicable to credit unions is drafted.

NAFCU understands that the Bureau is attempting to curb abusive and harassing debt collectors, but credit unions do not engage in these types of activities. Additional debt collection rulemakings will force credit unions to devote more time and resources to assisting third party debt collectors. Therefore, NAFCU suggests that credit unions be excluded from any debt collection rulemakings.

Equal Credit Opportunity Act

The Bureau should issue guidance on how disaggregated data will be compiled and reported to comply with Regulation C.

NAFCU appreciates the Bureau's efforts to simplify compliance with the *Equal Credit Opportunity Act* (ECOA). The harmonization of Regulation B with the reporting requirements of Regulation C (*Home Mortgage Disclosure Act*) is especially helpful to NAFCU members and has provided greater flexibility for creditors. Compliance is easier for those creditors with applications subject to the reporting requirements under section 1002.13, now that they may use either aggregated or disaggregated ethnicity and race categories. The Bureau's proposed optional collection of disaggregated ethnicity and race information is an example of a rulemaking that recognizes and addresses the difficulty of small institutions in implementing compliance.

Despite the changes to the final rule, NAFCU is concerned that the flexibility provided will result in confusing, dissimilar demographic data that may not accurately reflect diversity. Further, the rule is silent as to how the process for evaluating disaggregated data collected and reported will comply with Regulation C. The final rule does state that entities who report race and ethnicity under the revised Regulation C will be compliant with Regulation B. For those credit unions that must comply with both regulations, clearer guidance would be especially helpful. Therefore, NAFCU requests that the Bureau issue guidance on how data compiled and reported for Regulation B will comply with Regulation C.

Secure and Fair Enforcement for Mortgage Licensing Act

The Bureau should review Appendix A to Part 1008 for clarity.

NAFCU suggests that the Bureau review the definition and examples of "mortgage originator" as defined in the *Secure and Fair Enforcement for Mortgage Licensing Act* (S.A.F.E. Act). In an effort to provide credit union members with exceptional customer service, credit union personnel often find themselves in a position where they need to assist a member with a mortgage loan. However, credit union personnel fear that such assistance may require them to register as a mortgage originator based on the current definition and examples provide in Appendix A to Part 1008.

Appendix A to Part 1008 provides examples of when an individual "takes a loan application" and when an individual does not. For an individual to be deemed as a mortgage originator that person must meet both prongs of the test; the individual must take the mortgage loan application (receipt of the application, for the purpose of facilitating a decision to extend an offer), and offers or negotiate terms of the loan for compensation or gain. NAFCU understands that the Bureau's goal is to provide accountability of mortgage originators; unfortunately NAFCU members remain confused by the examples provided in Appendix A. Accordingly, NAFCU suggests that the Bureau review Appendix A to Part 1008 to clarify the examples made.

Electronic Fund Transfer Act

The Bureau's rulemaking should not curtail credit unions' overdraft programs. A safe harbor exemption for credit unions that utilize the Model Forms should be explored, or at a minimum the Bureau should restructure the Model Forms to mitigate vagueness.

NAFCU appreciates the Bureau's efforts to reform Regulation E, including the recent studies and information collection on overdraft markets. Credit unions focus on providing value to their members by offering responsible overdraft protections. Again, credit unions work with clients and often waive fees and work to ensure members' financial health.

According to NAFCU's 2017 Federal Reserve Meeting Survey, 55 percent of credit union members opted in to overdraft protection services. Limiting overdraft services will have a wide scale negative effect. Credit union members have come to rely on these services, and consumers would suffer if this service ceased or was limited. Curtailing these services could lead to increases in expensive short-term loans to meet emergency expenses, negatively impacts on consumers' credit scores, and consumers suffering embarrassment for denied transactions. Accordingly, NAFCU recommends any rulemaking by the Bureau not curtail this important service that exists for consumers to have peace of mind.

Regulation E provides credit unions Model Forms that contain notice requirements for overdraft services. Despite the usage of the Model Forms, credit unions are finding themselves now at risk for litigation due to the vagueness of the forms. Credit unions utilize the Model Forms in an effort to mitigate notice errors and provide consumers with reliable and transparent information. Modifications to the Model Forms are allowed, so long as they accurately reflect the services offered. NAFCU recommends that the Bureau provide a safe harbor for those credit unions that use the Model Forms, or at a minimum, restructure the Model Forms in a way that mitigates vagueness.

Truth in Lending Act

The Bureau should change the frequency of required credit card agreement posting to the Bureau.

NAFCU members understand the importance of providing consumers transparent credit card information through credit card agreements. The posting of credit card agreements to a centralized database allows consumers to comparison shop and thus promotes competition in the marketplace. However, a minor change in this required process could substantially make an impact by reducing regulatory burdens on credit unions while still maintaining real time and up to date transparent information for consumers.

Section 1026.58 of subpart G requires the posting of credit card agreements and any amended credit card agreement during the quarter to the Bureau. This is an onerous task for small credit unions. Although the rule states that those previously submitted credit card agreements that have not yet been amended do not have to be re-posted to the Bureau, the required quarterly frequency is too short. NAFCU suggests a longer time frame for credit unions to post their credit card agreements to the Bureau.

The Bureau should provide an exemption from escrow requirements for high-priced mortgage loans where the borrower does not own the land.

The *Truth in Lending Act* (TILA) requires lenders of high-priced mortgage loans (HPML) to open escrow accounts to cover property taxes and insurance for a minimum of five years. Manufactured home loans are considered HPMLs. Credit unions are committed to providing loan options for affordable housing, including manufactured homes. Those credit unions that provide loans for the purchase of manufactured homes must meet the requirements for HPMLs.

In certain instances, borrowers do not own the land on which the manufactured home is placed and therefore the property taxes are not assessed to the member but are instead paid by the land owner. For example, a borrower who places a manufactured home in a manufactured home park in Alabama, Florida, or New York is not assessed property taxes, and the park owner is responsible for payment of taxes. These borrowers may also be paying for property taxes in their monthly rental payments to park owners. These escrow requirements create larger obligations for the borrower and thus increase costs to both the consumer and credit unions. Credit unions that are required to hold funds for payment of property taxes and insurance are not able to free up funds to lend to other borrowers.

Required escrow accounts are costly to credit unions holding manufactured home loans, and unnecessary for those borrowers who do not own the land and not subject to paying property taxes. NAFCU recommends the Bureau provide an exemption for manufactured homes from HPML escrow account requirements when the borrower does not own the land.

Conclusion

NAFCU appreciates the opportunity to provide comments on this request for information regarding the Bureau's inherited regulations and inherited rulemaking authority. If you have any questions or concerns, please do not hesitate to contact me at kschafer@nafcu.org or (703) 842-2249.

Sincerely,

Kaley Schafer
Regulatory Affairs Counsel