



3138 10th Street North
Arlington, VA 22201-2149
703.842.2215 | 800.336.4644
F: 703.522.2734
dberger@nafcu.org

B. Dan Berger
President & Chief Executive Officer

National Association of Federal Credit Unions | www.nafcu.org

December 8, 2015

Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

RE: NAFCU's 2016 Top Priorities and Concerns

Dear Director Cordray:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I am writing to thank you for meeting with the NAFCU Board of Directors on December 7, 2015. NAFCU and our members fundamentally believe that an open line of communication between regulators and the financial industry is beneficial to consumers. As such, I would like to highlight NAFCU's efforts in the areas of education and compliance as well as our top priorities and concerns with the Consumer Financial Protection Bureau's (CFPB's) 2016 Regulatory Agenda.

General Comments

2015 has been a year of change for the financial services industry as we have witnessed the implementation of several substantive regulations from the CFPB and other regulators. During this critical time, NAFCU has focused on providing credit unions with the tools and resources that enable them to succeed in a landscape characterized by overwhelming regulatory burden. Our mission is to provide credit unions with the best federal advocacy, education and compliance assistance in the industry.

NAFCU prioritizes education and compliance by providing resources tailored to our nearly 800 credit union members. These resources include highly-rated and content-driven conferences and training opportunities that provide credit unions with the necessary information to take on the daily challenges they face. In addition to in-person conferences on an array of topics, our state-of-the-art online training center allows credit union personnel to access expert instruction on the industry's high priority issues. So far this year, credit unions have been able to obtain substantive content on a number of CFPB-specific topics, including a 15-part bootcamp series that serves as a line-by-line breakdown of the TILA-RESPA Integrated Disclosure (TRID) Rule.

With the ever-changing regulatory landscape, a credit union's compliance staff must stay up-to-date on the latest information to ensure their credit union stays compliant. To that end, NAFCU's Regulatory Compliance Team provides to credit unions an extensive list of useful resources, ranging from the monthly NAFCU Compliance Monitor, which highlights recent regulatory developments, to the extremely popular NAFCU Compliance Blog, which has over 5,300 subscribers. Most importantly, our compliance attorneys are available to credit unions for assistance with federal compliance issues, especially questions related to the Bureau. In fact, so far in 2015, our Compliance Team has assisted our members on over 6,775 compliance issues, with over 550 and 1,010 contacts related to the TRID Rule and Regulation Z, respectively.

While NAFCU will continue to prioritize education and compliance, we are also focused on a number of issues looming for 2016. As indicated by the CFPB's fall 2015 Rulemaking Agenda, the Bureau intends to study or promulgate a rulemaking in a number of areas that could have a direct impact on credit unions. While there is a place for consumer protections, we believe that the Bureau should avoid undue burdens on credit unions that could prevent them from continuing to fairly and responsibly serve their members.

Payday Lending

On March 23, 2015, the CFPB hosted a field hearing during which the Bureau released an "Outline of Proposals Under Consideration" and announced the formation of a Small Business Review Panel to evaluate the impact of a payday lending rulemaking on small entities. The ideas being considered would cover both short- and long-term credit products. In addition to these general areas, the CFPB is considering imposing several requirements that would limit federal credit unions ability to offer NCUA-authorized Payday Alternative Loans (PALs).

As we have stated in meetings and letters to the Bureau, NAFCU supports the CFPB's mission to bolster consumer protections in an effort to eliminate the ability of predatory payday lenders to continue trapping consumers in cycles of debt they have little hope of exiting. These unscrupulous actors need to be thoroughly regulated and NAFCU looks forward to working with the Bureau to ensure consumers have access to borrowing options from reputable lenders, like credit unions, whenever possible.

As the CFPB has repeatedly acknowledged, federal credit unions and other insured depository institutions are not the bad actors in this space. NAFCU and our member credit unions believe that a blanket rule regulating all parties indiscriminately – good actors and bad actors alike – is likely to hinder the ability of credit unions to serve their members' financial needs. With that in mind, NAFCU recommends any future payday rulemaking promulgated by the Bureau include an express exemption for federal credit unions and other insured depository institutions conducting short-term, small-amount loans in accordance with current state or federal laws, such as the National Credit Union Administration's (NCUA's) Payday Alternative Loan (PALs) program.

Prepaid Accounts

On November 13, 2014, the CFPB released a proposed rule creating federal consumer protections for the prepaid account market. In particular, the proposal requires prepaid companies to limit consumers' losses when funds are stolen or cards are lost, investigate and resolve errors, provide easy and free access to account information, and adhere to credit card protections if a credit product is offered in connection with a prepaid account. The CFPB is also proposing prepaid disclosures, targeted at providing consumers with information about the costs and risks of prepaid products upfront.

NAFCU supports the Bureau's efforts to ensure that consumers using prepaid products are sufficiently informed and protected. Credit unions consistently strive to provide their memberships with the sort of information useful to determining which products are best for them. The proposed amendments, as they stand, raise serious concerns about the future of prepaid products and the impact that will be felt by small financial institutions as they attempt to comply with costly and complex regulatory requirements. NAFCU believes that the Bureau should find an appropriate balance between adequately protecting consumers and allowing consumers to access the products they demand.

Overdraft

For the past two years, the CFPB has repeatedly placed overdraft on its rulemaking agenda. However, the timeframe for the release of a proposal continues to be delayed due to the Bureau's tenuous statutory authority in this area coupled with consumers' continued support of overdraft programs. In the meantime, the CFPB has continued to study overdraft markets and conducted several high profile information collections. All of these efforts indicate the Bureau is progressing toward a rulemaking in 2016.

As member-owned institutions, credit unions have a vested interest in informing and educating their member-owners on the terms and conditions of financial products and services. Credit unions have a strong track record of working closely with their members to resolve any disputes or concerns, particularly regarding overdraft fees. NAFCU's June 2015 Economic & CU Monitor survey found that every respondent offered an alternative to overdraft or courtesy pay programs, with overdraft lines of credit and linked savings accounts being the most popular (84.4%). Additionally, nearly every respondent (97%) will reverse an overdraft charge on a case-by-case basis.

Based on NAFCU's data, the average credit union respondent has had their overdraft protection program in place for a decade and received only two member complaints related to overdraft in 2014. NAFCU member credit unions are doing their part to make sure their members are knowledgeable and informed consumers with regard to overdraft protection. Over two-thirds of respondents (68.8%) contact members who repeatedly incur overdrafts. Over 81.8% of NAFCU respondents stated that they offer financial literacy training to their members that focused on overdraft avoidance.

As the Bureau continues its study of consumer education and choice with regard to overdraft protection services, NAFCU and our members hope to be a resource for the CFPB staff and share our insights on providing credit union members desired overdraft services.

Arbitration

The *Dodd–Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act) directed the CFPB to study the use of arbitration agreements in consumer financial products or services. On October 7, 2015, at a field hearing on arbitration, the CFPB released an “Outline of the Proposals Under Consideration” and announced the formation of a Small Business Review Panel. The CFPB is currently considering imposing a restriction prohibiting the use of class action waivers in mandatory pre-dispute arbitration agreements. In addition, the CFPB is also considering requiring credit unions to submit information on arbitration claims and awards to the Bureau, which may then be posted for public view on the CFPB’s website.

NAFCU and our members strongly support reasonable and fair dispute resolution and we appreciate the CFPB examining practices that could harm consumers. However, as with any rulemaking, NAFCU wants to ensure that there are no unintended consequences for credit unions. The CFPB’s outline suggested suggest broad, sweeping reporting requirements that may unintentionally burden credit unions. NAFCU is looking forward to working with the Bureau to closely review the proposals under consideration to avoid those unintended consequences.

Consumer Complaint Database

On June 25, 2015, the CFPB published over 7,700 Consumer Complaint Narratives. In conjunction with this new system, the Bureau began publishing a monthly Complaint Snapshot Report. NAFCU remains skeptical that any potential benefits of the Consumer Complaint Database justify the reputation and privacy risks. Currently, there is no mechanism to validate a consumer’s comments, which creates harmful reputational risks to credit unions and other financial institutions. In particular, credit unions are often unable to directly communicate with their members who share a story with the CFPB because the information from a consumer is anonymized. This leaves credit unions in a no-win situation. On one hand, if a credit union fails to respond, it appears as though there was no acknowledgement or resolution of the member’s complaint. On the other hand, credit unions are concerned about the risk of disclosing personally identifiable financial information. This encourages credit unions to respond with a generic response, rather than allowing credit unions to deal with their members directly and personally.

In addition, each month the CFPB’s Complaint Snapshot Report spotlights a particular product and geographic location. However, the analytics are not based on an industry-wide collection of data. Instead, the monthly snapshot only provides an insular view of market-data based only on complaint information that the CFPB receives. NAFCU is concerned that the CFPB is incorrectly characterizing the narratives as statistically relevant “trends and analyses” that can be used to inform the public and the marketplace. Therefore, NAFCU and our members believe that the Bureau should discontinue publishing the monthly Complaint Snapshot Report. Also, credit unions and other covered financial institutions should have the opportunity to periodically review

the data held by the CFPB. If the data proves to be incorrect or misleading, the Bureau should institute guidelines to either substantiate the data or remove it.

HMDA

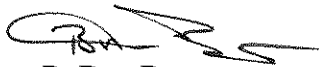
The CFPB finalized amendments to Regulation C in October 2015 that make several substantive changes to the reporting requirements under the Home Mortgage Disclosure Act (HMDA). The final rule, among other things, expands the data financial institutions are required to collect and report under Regulation C. Some of the expanded data collection and reporting is driven by the Dodd-Frank Act, which amended HMDA to require collection of certain new data points. However, the CFPB also appears to have taken this opportunity to collect significantly more data than the Dodd-Frank Act expressly requires. In addition to the expanded data collection, the final rule changes the scope of Regulation C's coverage to include most closed-end loans, open-end lines of credit, and reserve mortgages secured by dwellings. Under this expansion, reporting will be required on all HELOCs.

While NAFCU and our members support HMDA requirements that further the goal of ensuring fair lending and anti-discriminatory practices, we are concerned that some of the additional reporting requirements will not achieve these goals and may only serve to impose significant additional compliance and reporting burdens on responsible lenders like credit unions who work to meet their members' needs with safe, sound and fair products. As the CFPB and Congress have repeatedly recognized, credit unions did not engage in the type of mortgage-related practices that the Bureau is seeking to identify through an expanded HMDA dataset. Moreover, mandating home equity lines of credit reporting will exacerbate compliance costs and burdens on credit unions since they will have to make costly modifications to their systems in order to collect data on these newly covered transactions. NAFCU will continue to work with the Bureau to ensure credit unions receive adequate compliance guidance and the privacy concerns of consumers are addressed.

Conclusion

Thank you again for taking the time to meet with the NAFCU Board of Directors. NAFCU and our members look forward to working with the Bureau to ensure credit unions are able to continue offering financial products and services designed to help each member achieve their individual financial needs and goals. Should you have any questions or would like to discuss these issues further, please feel free to contact me, or Alicia Nealon, NAFCU's Director of Regulatory Affairs at (703) 842-2266 or anealon@nafcu.org.

Sincerely,



B. Dan Berger
President/CEO

