National Association of Federal Credit Unions
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NAFCU | Your Direct Connection to Education, Advocacy & Advancement

August 28, 2015

U.S. Department of the Treasury
1500 Pennsylvania Avenue NW, Room 1325,
Washington, DC 20220

RE: Response to Request for Information Regarding Online Marketplace Lending

Dear Ms. Temel:

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 you regarding the U.S. Department of the Treasury (Treasury) request for information regarding online marketplace lending. NAFCU and our member credit unions are committed to ensuring that consumers and small businesses have access to safe and affordable credit. The post-Dodd-Frank environment threatens to stifle this access as the overwhelming regulatory burden has strained credit unions' ability to lend and innovate. Accordingly, NAFCU urges Treasury to closely study the impact that regulatory burdens placed on credit unions since the financial crisis have had on the availability of credit and the growth of online market lenders.

Overwhelming Regulatory Burden on Credit Unions

While NAFCU and its member credit unions take efforts to ensure the safety and soundness of the financial system extremely seriously, the regulatory pendulum post-crisis has swung too far towards an environment of overregulation that threatens to stifle economic growth. Credit unions were not responsible for the financial mismanagement and the excessive risk-taking that led to the recent financial crisis. As member owned, democratically operated, not for profit organizations, credit unions are responsible actors who are limited in how they can invest their members' deposits and were subject to stringent capital requirements even before the financial crisis. The structure of a credit union allows each institution to pass their earnings directly to their members – not stockholders – in the form of lower interest rates and fees, particularly on consumer loans. During the crisis, credit unions kept making auto loans, home loans, and small business loans, even when other lenders cut back.

Although credit unions continue to focus on their members, the increasing complexity of the regulatory environment, after the passage of the *Dodd-Frank Act*, is taking a toll on the credit union industry. The impact of the growing regulatory burden on credit unions is evident as the number of credit unions continues to decline. Since the second quarter of 2010, we have lost 1,250 federally-insured credit unions – over 17% of the industry. The fact is that many smaller institutions simply cannot keep up with the new regulatory tide and have merged out of business or been taken over. The growing regulatory tide affecting small financial institutions has led to the rise in non-traditional financial actors such as online lenders. Recognizing that there are a number of outdated regulations and requirements that no longer make sense and must be modernized or eliminated, NAFCU drafted and released a document entitled "NAFCU's Top Ten Regulations to Eliminate or Amend" in February 2015. This document outlines ten key issues that regulators can and should act on now to provide meaningful relief, allowing credit unions to continue to do what they do best – meet the credit and lending needs of over 100 million consumers and small businesses around the country. NAFCU believes that the growth of online lenders proves the need for regulators to modernize existing regulations on traditional financial institutions in order to facilitate greater access to credit.

Uneven Playing Field for Online Lenders

While NAFCU firmly believes that the regulatory pendulum has swung too far since the passage of the *Dodd-Frank Act*, we have long supported the intent and protections captured in consumer lending laws, such as the *Truth in Lending Act* (TILA). Online lenders, however, are not subject to these important consumer protection laws. As such, online lenders are often able to operate more quickly and with fewer compliance costs since they are not required to follow the same disclosure practices and underwriting standards of traditional lenders. NAFCU and our members strongly urge Treasury and other financial regulators to promulgate rules that require online market lenders to meet regulatory requirements such as the protections of TILA, underwriting standards for loans, and applicable state usury laws.

NAFCU appreciates Treasury's acute attention to this rapidly growing industry that often does not have to follow the same consumer protection and lending standards as traditional financial institutions. The online market is largely a proliferation of peer-to-peer lenders, hedge funds, or other entities that are not subject to consumer protection laws such as TILA. NAFCU and our members are concerned that consumers may enter into an online loan without receiving full disclosure about the terms and fees of the loan. For example, there are some online lenders that originate loans across the country but choose to underwrite the loans in a state that does not have a usury cap. NAFCU urges Treasury to carefully study and identify the practices that online lenders are engaging in to circumvent consumer protection laws and underwriting standards that are imposed on traditional financial institutions.

Regulatory Burdens on Credit Unions' Small Business Lending Abilities

NAFCU continues to hear that many small businesses are forced to turn to online lenders because they are unable to secure lines of credit from traditional financial institutions. Credit unions are unable to adequately meet the needs of America's small businesses due to outdated and unnecessary regulatory burdens on the amount of member business loans that they are allowed to extend. The *Credit Union Membership Access Act of 1998* (CUMAA) amended the *Federal Credit Union Act* (FCUA) to impose an aggregate limit on an insured credit union's outstanding member business loans (MBLs). Specifically, the law caps an insured credit union's total amount of outstanding MBLs to the lesser of 1.75 times the credit union's net worth or 1.75 times the minimum net worth required under the FCUA for a credit union to be well capitalized ("the MBL cap"). NAFCU continues to hear from our members that regulations related to member business lending continue to inhibit their ability to adequately serve the small business needs of their members and communities at large. While recovery from the financial crisis is ongoing, credit unions have the necessary capital available today to help America's small businesses thrive. Legislative and regulatory efforts to remove or modify the existing MBL cap would provide economic stimulus without costing the taxpayer a dime.

Over the years, officials from the Treasury Department and the Small Business Administration have expressed strong support for lifting the MBL cap placed on credit unions. A January 2001 study by the Treasury Department and a 2011 study commissioned by the Small Business Administration's Office of Advocacy both found that bank lending was largely unaffected by changes in the credit unions' business lending, and that credit unions have the ability to offset declines in bank business lending during a recession. NAFCU and our members strongly urge Treasury to conduct a study similar to its 2001 report on the small business lending marketplace in order to highlight the unique role that credit unions can play in providing much needed credit availability.

Conclusion

NAFCU and our members believe that without requiring these unchecked online lenders to follow basic consumer protection regulations, well-regulated credit unions will increasingly be unable to serve the everyday credit needs of American consumers at competitive rates. NAFCU applauds Treasury's willingness to study this growing online marketplace to ensure that consumers are not being taken advantage of and that traditional financial institutions such as credit unions are able to provide competitive services.

We look forward to continuing to work with Treasury to address more ways that the agency can streamline and refine existing regulations in order to more effectively grow and support the dynamic credit union industry. Should you have any questions or would like to discuss these issues further, please feel free to contact me at ksubramanian@nafcu.org or (703) 842-2212.

Sincerely,

K. Subramanian

Kavitha Subramanian
Regulatory Affairs Counsel