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National Association of Federally-Insured Credit Unions

November 17, 2017

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

RE: Consumer Financial Protection Bureau Strategic Plan, FY 2018-2022

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 regard to the Consumer Financial Protection Bureau's (CFPB) Fiscal year 2018-2022 Strategic Plan (Plan).

Like the Bureau, credit unions want their members to have access to responsible credit. Also like the Bureau, credit unions want to play a role in helping members build wealth, and achieve financial health and security. The Bureau's strategic plan should focus on creating a regulatory environment that focuses on unregulated bad actors that negatively impact consumers, and recognize that credit unions are unique in the financial services market.

NAFCU believes that the Bureau should use the publication of its strategic plan as an opportunity to review all its regulations. To assist in this effort, NAFCU recommends that the Bureau establish a regulatory reform Task Force and adopt a regulatory reform agenda, pursuant to President Trump's Executive Order 13777, "Enforcing the Regulatory Reform Agenda." NAFCU asks the Bureau to evaluate all its existing regulations to identify which should be repealed, replaced, or modified. While NAFCU has a number of concerns with several Bureau rules, the following is a summary of the most impactful on credit unions.

Increased Use of Exemption Authority

Since the enactment of the Dodd-Frank Act, 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 this rate of loss has only increased since the creation of the CFPB. A large majority of those credit unions that have closed or merged were small in asset size, and as such, could not afford to comply with all the rules promulgated by the CFPB. Therefore, it is incumbent upon the CFPB to provide some degree of regulatory relief for small entities that cannot afford to comply with complex rules, and would otherwise be forced to stop offering services to members.

Although the Bureau already provides for some exemptions based on an entity's asset size, such as the QM rule, NAFCU strongly believes that the Bureau can do more, such as increase the exemption threshold, or consider exemptions based on an institution's characteristics and activities.

For example, on October 26, 2017, the Office of Financial Research (OFR), led by a Director that was appointed during the previous administration, published a report that supports NAFCU's long-held stance that size does not equal risk. The report, "Size Alone is not Sufficient to Identify Systemically Important Banks," found that the asset size of an institution is insufficient to determine riskiness. Rather, the report asserts that a multi-factor test that examines the nature and activities of the institution is a better indicator of risk.

While NAFCU appreciates that CFPB's various asset threshold requirements are intended to provide regulatory relief, we stress that the Bureau should not hinge its determinations on the asset size of the credit union. As the Bureau considers the reform measures recommended in this letter, NAFCU respectfully asks CFPB to more closely consider criteria by which a credit union should achieve relief, rather than prohibit relief merely due to asset size.

Unfair, Deceptive, or Abusive Acts and Practices

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 unfair, deceptive, or abusive acts and practices (UDAAP), that provide few or no specific directives for implementation and for which neither CFPB nor the National Credit Union Administration (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.

Further, 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.

Debt Collection

NAFCU remains concerned that rulemakings by the CFPB regarding first-party debt collection will be burdensome and onerous for credit unions. In the past, the CFPB has failed to account for unique aspects of federal credit unions, including the rights granted by the Federal Credit Union Act to both credit unions and their members. For example, unlike bank customers, credit union members have procedural rights regarding expulsion under Section 118 of the Federal Credit Union Act. Further, federal credit unions are granted the power to impress and enforce the statutory lien when a member is delinquent on a loan. These rights are conferred by Congress and should be carefully considered when any debt collection regulation applicable to credit unions is drafted.

Qualified Mortgages

Many of NAFCU's members have decided to extend only mortgages that meet the definition of safe harbor "qualified mortgage" as they are concerned that they will not be able to sell non-qualified mortgages and are worried about the legal and regulatory risks associated with extending non-qualified mortgages. Due to the hesitance of lenders to extend non-qualified mortgages, NAFCU is concerned that many otherwise qualified borrowers will not be able to obtain mortgages.

NAFCU believes the definition of qualified mortgage must be revised in a number of ways to reduce the enormous negative impact the rule undoubtedly has on credit unions and their members, in particular the debt-to-income (DTI) threshold (43% of the total loan) and the inclusion of affiliate fees in the calculation of points and fees.

Mortgage Servicing

The CFPB's mortgage servicing rule has unnecessarily complicated mortgage servicing, greatly increased costs of servicing and jeopardized credit unions' established practices that center on relationships with members. NAFCU's concerns with the rule include the cost and burden related to the host of new or greatly revised periodic statement, policies, procedures and notices it requires, as well as the timing and inflexible procedural requirements related to how a credit union must deal with delinquent borrowers and take loss mitigation actions. Although the rule does exempt credit unions that service 5,000 or fewer mortgages, along with affiliates, from some of the requirements, mortgage servicing costs have nevertheless greatly increased for all credit unions.

Reputation Risk

The CFPB continues to encourage consumers to utilize its public Consumer Complaint Database to disclose consumer complaints and narratives that the CFPB receives on most financial products, such as credit cards, mortgages, bank accounts and services, private student loans, other consumer loans, credit reporting, money transfers and debt collection.

NAFCU believes that the CFPB Consumer Complaint Database presents a very specific reputational risk concern for financial institutions. These complaints follow a pattern of unverified information that is given credibility by the mere fact that the CFPB is posting it on their website. There is no mechanism to ensure the complaints are fully vetted. Credit unions have unique relationships with their members and NAFCU supports resolution and investigation of valid and verified member complaints by the credit unions, but the reputation risk brought on by unverified complaints is significant and not easily mitigated.

Remittances

In July 2014, the CFPB finalized amendments to its Remittance Rule. Prior to these amendments, the Bureau released a series of final rules concerning remittances, all of which became effective on October 28, 2013. The regulatory burden that the Remittance Rule places on credit unions has led to a significant reduction in consumers' access to remittance transfer services. NAFCU has heard from a number of its members that, because of the rule's compliance burden, they have been forced to discontinue, or will be forced to discontinue, their remittance programs.

NAFCU members have also indicated that the compliance costs associated with the rule have had an impact on their ability to offer other services to their members. Accordingly, NAFCU continues to encourage the CFPB to expand the threshold for the safe harbor from the definition of "remittance transfer provider" in order to ensure that a meaningful safe harbor is established. While the Bureau recently solicited comments as part of the rule's five-year review, NAFCU believes that the gravity of this rule's impact warrants greater precedence.

Home Mortgage Disclosure Act Requirements

The CFPB finalized amendments to Regulation C in October 2015 that made several substantive changes to the reporting requirements under the Home Mortgage Disclosure Act (HMDA). The final rule, among other things, expanded the data financial institutions are required to collect and report under Regulation C. Some of the expanded data collection and reporting is driven by Dodd-Frank, 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 Dodd-Frank expressly requires. In addition to expanded data collection, the final rule changed the scope of Regulation C's coverage to include most closed-end loans, open-end lines of credit and reverse mortgages secured by dwellings. Under this expansion, reporting is required on all HELOCs.

NAFCU believes that the Bureau should limit the changes to the HMDA dataset to those mandated by Dodd-Frank. While credit unions support HMDA requirements that further the goal of ensuring fair lending and anti-discriminatory practices, NAFCU is concerned that some of the additional reporting requirements do not achieve these goals and only serve to impose significant additional compliance and reporting burdens.

Additionally, NAFCU urges an exemption from HMDA reporting for all home equity lines of credit or, in the alternative, higher reporting thresholds for close-end and open-end loans. Recently, the Bureau proposed amendments to Regulation C that would increase the threshold for collecting and reporting data with respect to open-end lines of credit so that financial institutions originating fewer than 500 open-end lines of credit in either of the preceding two years would not be required to collect such data. However, this exemption is only in effect for a period of two years, until January 1, 2020. NAFCU strongly urges the Bureau to make this exemption permanent so that credit unions have long-term certainty.

Overdraft

NAFCU believes the CFPB's continued pursuit of data on overdraft programs constitutes extraordinary regulatory overreach. Credit unions are focused on providing value to their members by offering responsible overdraft protection. In fact, 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 or money market accounts being the most popular (84.4% each). Instead, NAFCU asks that the Bureau's reform agenda indicate its intentions to not promulgate overdraft regulations.

Although credit unions support the Bureau's overall goals, NAFCU believes that many of the CFPB's regulations can be further tailored to achieve the same results, but less invasively. Establishing a Regulatory Reform Task Force and reform agenda should be a priority in FY 2018-2022. Should you have any questions or would like to discuss these issues further, please contact me at (703) 842-2249 or memancipator@nafcu.org

Sincerely,

Michael Emancipator
Senior Regulatory Affairs Counsel