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National Association of Federally-Insured Credit Unions

June 7, 2017

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

RE: Consumer Credit Card Market (Docket No. CFPB-2017-0006)

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) review of the consumer credit card market in connection with the *Credit Card Accountability Responsibility and Disclosure Act of 2009* (CARD Act). In an increasingly competitive credit card market, credit unions, despite their limited resources, have been forced to comply with stunningly complicated disclosure requirements as a result of the CARD Act. These onerous disclosure requirements have done little to educate consumers, all the while making it harder for credit unions to find innovative solutions to enhance their members' experiences. Furthermore, the CARD Act's ability to pay requirements, as applied to secured credit cards, has made it harder for credit unions to help those individuals who need access to credit the most.

NAFCU asks the CFPB to very closely evaluate the effects credit card regulations and other forces such as data breaches have had and continue to have on the credit union industry. The CFPB should engage in a cost-benefit analysis of such regulations and seek to eliminate duplicative or unnecessary regulations that have caused more harm than good to an industry that is overwhelmingly populated with good actors seeking to help consumers achieve their financial dreams.

General Comments

The CARD Act was signed into law in May 2009. The CARD Act amended the *Truth in Lending Act* and created additional consumer protections for the credit card market. The CARD Act was enacted to "establish fair and transparent practices related to the extension of credit" in the market and aimed to regulate both the underwriting and pricing of credit card accounts. On July 21, 2011, with the passage of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*, implementation of the CARD Act passed from the Board of Governors of the Federal Reserve System to the Consumer Financial Protection Bureau. Section 502(a) of the CARD Act instructs the CFPB to conduct a review of the consumer credit card market, including the Act's effect on the cost and availability of credit and the adequacy of consumer protections in credit card plans, every two years.

NAFCU and its member credit unions have consistently supported providing consumers with fair and transparent financial products to suit their individual needs and goals. As not-for-profit, cooperative financial institutions, credit unions are always exploring new opportunities to take care of their members instead of capitalizing on their oversights. Therefore, the CARD Act's requirements, in particular the disclosure requirements, have mandated that credit unions change the way they approach the credit card market and interact with their members.

Effects of Increased Regulatory Burden

Ever-increasing regulation has established an intricate compliance environment that has not only made it more difficult for credit unions to provide services to their members, but has also made it challenging to explore new technologies and opportunities. Regulations have also made it harder for credit unions to offer credit to individuals who would otherwise struggle to gain access to credit because of negative credit history. In particular, with respect to secured credit cards, the ability to pay requirement is not only misplaced, but has also proven to be particularly burdensome. Overall, more regulation has meant less innovation in terms of credit unions' ability to improve their online and mobile account servicing platforms and has only further marginalized those individuals who are already largely excluded from the credit market.

Online and Mobile Account Servicing

Regulatory obstacles created by the CARD Act have made it more difficult for credit unions to find creative solutions to leverage online and mobile servicing platforms to improve their members' experiences. Although the required disclosures may provide consumers with more information regarding credit card terms and create greater transparency overall, credit unions have struggled to keep up with compliance requirements while trying to utilize technology to enhance members' experiences.

In particular, some credit unions are facing difficulties with efficiently connecting current legacy lending systems to online and mobile applications. This difficulty arises because credit unions have limited resources, both monetarily and personnel-wise, and massive regulatory changes require a shift in the way those resources are allocated. In this context, that means finite attention and resources are redirected from developing new and creative approaches aimed at improving member services and increasing efficiency to complying with a mountain of regulatory requirements.

This is further complicated by a more saturated lender market, especially those issuers willing to offer credit to subprime consumers. This year, more than 171 million consumers had access to a credit card. The number of consumers with credit cards is the highest it has been since 2005. Unlike credit unions, many of these issuers have access to greater resources and are able to offer more conveniences via online and mobile servicing platforms. Trying to compete based on resources alone is difficult enough but add in complicated compliance hurdles and competing is no longer a realistic option for many credit unions.

Secured Credit Cards

Currently, the CARD Act requires a credit union to evaluate a member's ability to pay for a share-secured credit card. Credit union members are also the owners of the credit union; therefore, the collateral for a secured card is the member's shares in the credit union, or their share account. This eliminates the need for a credit union to conduct an independent ability to pay analysis. The requirement to engage in this analysis has made the process of applying for a secured credit card more time intensive, both for the credit union and its members. Additionally, by requiring credit unions to perform an ability to pay analysis, many "credit invisible" borrowers are being denied access to the credit they so desperately need to build or rebuild their credit history. This runs counter to the CFPB's mission of expanding access to credit for the "credit invisible."

NAFCU has repeatedly asked the CFPB to reevaluate the ability to pay requirement in the context of secured credit cards, particularly as applied to credit unions. NAFCU is now asking the CFPB to exclude secured cards from the ability to pay requirements of the CARD Act because they do not carry the same level of risk as unsecured cards. An independent ability to pay analysis for secured credit cards is just one more regulatory obstacle that has made it harder for credit unions to properly serve their members.

Credit Unions Put Consumers First

Credit unions are the good actors in the market. Not only are credit unions regularly providing their members with higher quality credit card products with lower interest rates, but they also have consistently lower charge-off and delinquency rates than banks. In fact, in 2016, banks had an average credit card charge-off rate of 3.47 percent compared with a 2.2 percent credit card charge-off rate for credit unions. Delinquency rates are equally as telling. Credit unions averaged a 1.1 percent credit card delinquency rate whereas banks had a 2.42 percent delinquency rate. This trend has been consistent throughout history and certainly since the financial crisis.

Unlike banks, credit unions have always put their members first and strive to design products that are fairer and provide greater benefits. Credit unions already prioritized member-friendly fee structures prior to the passage of the CARD Act and as a result may have been less affected overall by the disclosure requirements; however, credit unions are nonetheless finding it challenging to offer new services and provide creative and efficient solutions as a result of the regulatory obstacles. A reduced regulatory burden would make it easier for credit unions to improve their members' experiences with new technology and creative solutions. NAFCU urges the CFPB to exclude credit unions from any additional credit card regulation because the existing regulations have already had a significant impact on the industry.

Effect of Data Breaches on the Consumer Credit Card Market

Data breaches have always posed a threat to the safety and soundness of the financial industry but financial institutions have been experiencing a decrease in data breaches. From 2015 to 2016, banking, credit, and financial institutions saw a 26 percent decrease in data breaches. In 2016, however, there was a 40 percent increase in data breaches overall, with a record high of 1,093 reported data breaches. These data breaches exposed a significant amount of credit card information.

According to the 2017 Identity Theft Resource Center's Breach Report, as of May 30, the business industry remains at the top of the list of five industry sectors affected by data breaches, comprising 55.9 percent of the overall number of breaches. The banking, credit, and financial industry sector only comprised 5.2 percent of all data breaches. As a result of these breaches, credit unions are deeply concerned about the future of the credit card market. Despite the use of top-of-the-line security safeguards and account monitoring tools, hackers continue to find innovative techniques to invade data systems. This forces credit unions to allocate a massive amount of resources to educate their members about data breaches and protect their members' financial data.

Nonetheless, any incident that involves payment information puts credit union cardholders at risk. Thus, retailers across the country need to adopt a new approach to protecting customer information. The data above also reaffirms that the onus is on retailers to protect consumers' financial information. NAFCU has consistently advocated for a stringent data security standard for retailers similar to the requirements imposed on financial institutions by the *Gramm-Leach-Bliley Act*. It is essential that the CFPB recognize the importance of and support such a legislative change because it would drastically improve the health of the credit card market.

Conclusion

NAFCU is thankful for the opportunity to provide feedback regarding the consumer credit card market. If you have any questions or concerns, please do not hesitate to contact me at akossachev@nafcu.org or (703) 842-2212.

Sincerely,

Ann C. Kossachev

Ann Kossachev
Regulatory Affairs Counsel