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**National Association of Federally-Insured Credit Unions**

May 7, 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 Bureau Rules of Practice for Adjudication  
Proceedings (Docket No. 2018-02208)

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 rules of practice for adjudication proceedings.

As an initial matter, NAFCU does not believe that credit unions should be subject to the Bureau's supervision and enforcement authority. The National Credit Union Administration (NCUA) is in the best position to supervise credit unions of all sizes, and NAFCU will raise this issue in response to the Bureau's request for information on supervision. We would also note that no credit union has fully proceeded through the Bureau's adjudication process, and the resolution of supervisory issues before a Bureau tribunal would, in most cases, be strongly disfavored. In this context, NAFCU proposes non-controversial changes to the Bureau's rules of practice that are broadly intended to promote flexibility, consistency and fairness.

With respect to the time for filing answers and notices of appeal, NAFCU recommends that the Bureau adopt more reasonable deadlines under §§ 1081.201 and 1081.402. Specifically, NAFCU requests that the Bureau amend its rules to provide respondents with at least 20 days to file an answer and 30 days to file a notice of appeal. Given that the notice of charges may involve complex factual allegations, potentially spanning years of activity and multiple parties, institutions should be afforded adequate time to carefully consider their responses. Furthermore, a 20 day deadline for filing answers would align the Bureau's rules with those used by the NCUA (12 CFR § 747.19) and other federal banking agencies.

To ensure that confidential information is not inadvertently disclosed, NAFCU also recommends that the Bureau amend § 1081.200(c) to extend the time to file a protective order (and the waiting period for publishing a notice of charges) until the filing deadline for answers. This would give respondents adequate time to consider the legal and factual nature of the charges brought against them, as well as additional time to assess third party claims of confidentiality. The current ten

day window is unreasonably short and could, if the Bureau decides to circulate the notice of charges prematurely, result in severe reputational harm or exposure to additional liability for breach of confidentiality. Given that the Bureau handles relatively few adjudicatory matters (only eight to date), allocating additional time for critical filing deadlines should not impose significant administrative burdens.

NAFCU also recommends that § 1081.119(d) be amended to provide movants with at least ten days to furnish supplemental information supporting a protective order if requested. Likewise, the Bureau should, as a matter of policy, liberally consent to the entry of protective orders. Doing so would protect institutions from potential abuse within the adjudicatory process and avoid unnecessary reputational injury, which could persist long after resolution has been reached in a particular matter.

In order to align the Bureau's rules of practice with the procedures established by other federal banking regulators, NAFCU recommends that the Bureau eliminate the requirement in § 1081.115(b) which states that the hearing officer in administrative adjudications strongly disfavor motions for extensions of time except upon a showing of substantial prejudice. NAFCU supports adoption of a policy that is generally permissive of motions for extensions of time, and more closely aligned with the NCUA's "for good cause shown" standard. Such a change would ensure that parties have adequate time to consider the Bureau's charges, which have sometimes relied upon unfamiliar interpretations of the law.

NAFCU also recommends that the Bureau adopt more permissive and balanced rules relating to the conduct of discovery. The current rule implements an "affirmative disclosure" framework that eliminates nearly all types of depositions and prohibits interrogatories. As a result, the Bureau maintains a substantial advantage in all adjudicatory proceedings, having collected all the information it needs beforehand during prior exams and investigations, whereas respondents must wait for the Division of Enforcement to disclose relevant materials after the notice of charges has been filed. Such a scheme severely impairs respondents' ability to gather all necessary facts in time to submit their answer. Furthermore, the current rule provides that subpoenas will only be enforced through application to the Bureau's General Counsel, which vests the agency with considerable discretion to either facilitate or deny important discovery requests. By contrast, the NCUA and Federal Deposit Insurance Corporation permit parties to apply to an appropriate United States district court for an order requiring compliance with the subpoena.<sup>1</sup>

To balance the Bureau's asymmetrical discovery framework, NAFCU recommends that respondents be permitted to depose any party with relevant and material knowledge of the matter, subject to applicable limits of privilege. In addition, the Bureau should permit respondents to serve interrogatories on third parties and align its rules for enforcing subpoenas with those used by other federal banking regulators. Instituting these changes will ensure that rules for discovery are fair to respondents and provide meaningful opportunities for parties to gather all necessary facts and evidence.

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<sup>1</sup> Compare 12 CFR § 1081.208(2)(i) with 12 CFR § 747.24(d) and 12 CFR § 308.26(c).

Lastly, NAFCU recommends that the Bureau seek to align applicable statutes of limitations with those periods adopted by federal courts to avoid inconsistency and unfairness in adjudication proceedings. The Bureau has, at times, taken the stance that statutes of limitations do not apply in the context of administrative proceedings to enforce consumer protection law.<sup>2</sup> Such a view is at odds with a well-established and well-functioning policy in common law that defines the maximum time period for bringing legal proceedings against a party. NAFCU believes that the Bureau should adhere to the statutes of limitations that would otherwise apply in federal court in order to preserve an essential element of fairness in adjudicatory matters.

NAFCU appreciates the opportunity to provide comments on this request for information regarding the Bureau's rules of practice for adjudication proceedings. If you have any questions or concerns, please do not hesitate to contact me at [amorris@nafcu.org](mailto:amorris@nafcu.org) or (703) 842-2266.

Sincerely,

A handwritten signature in black ink that reads "Andrew Morris". The signature is written in a cursive style with a long horizontal stroke at the end.

Andrew Morris  
Regulatory Affairs Counsel

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<sup>2</sup> See *PHH Corp. v. CFPB*, 839 F.3d 1, 10 (D.C. Cir. 2016).