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National Association of Federally-Insured Credit Unions

July 12, 2019

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

**RE: CFPB Review Pursuant to the Regulatory Flexibility Act
Docket No. CFPB-2019-0024**

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in regard to the Bureau of Consumer Financial Protection's (CFPB or Bureau) plan for review of its rules under the *Regulatory Flexibility Act* (RFA). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 117 million consumers with personal and small business financial service products. NAFCU supports the CFPB's efforts to seek comments on its review plan under Section 610 of the RFA (610 reviews) as well as to exercise its discretion to review rules not otherwise subject to 610 reviews. The Bureau should consider credit union-specific data as it evaluates both rules subject to 610 reviews and rules that fall outside of this review process to better inform the impact that significant rules are having on small entities. Additionally, because market conditions are subject to rapid change, NAFCU requests the CFPB consider more frequent reviews of its significant rulemakings to identify ways to reduce burdens on small entities like credit unions.

General Comments

In Section 610 of the RFA, Congress directs agencies to review certain rules within 10 years of their publication and consider the rules' effect on small businesses. The purpose of the review is to minimize any significant economic impact of the rules upon a substantial number of small entities, consistent with the stated objectives of applicable statutes. The RFA also requires each agency to seek public comment on each rule undergoing review and to consider a variety of factors including: the continued need for the rule; the nature of public complaints or comments on the rule; the complexity of the rule; the extent to which the rule overlaps, duplicates, or conflicts with federal, state, or other rules; and the time since the rule was evaluated or the degree to which technology, economic conditions, or other factors have changed the relevant market.

NAFCU acknowledges that the CFPB's 610 reviews will generally occur in addition to and separate from other reviews of its regulations. For example, Section 1022(d) of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act) directs the CFPB to assess each significant rule or order—those with an annual effect on the economy of \$100 million or

more, or that trigger one of the other specified criteria—adopted by the CFPB under Federal consumer financial law and to publish a report of each assessment not later than five years after the effective date of the subject rule or order. Similar to the Section 610 assessment, the CFPB’s Dodd-Frank Act assessment also must reflect available evidence and any data that the CFPB reasonably may collect to conduct a cost-benefits analysis. NAFCU encourages the CFPB to consider the impacts on credit unions using credit union-specific data not only when conducting the 610 reviews but also when conducting other reviews, as mentioned above.

In general, NAFCU supports the CFPB’s 610 review plan and is appreciative of the CFPB’s decision to follow the *Administrative Procedure Act*’s notice and comment rulemaking process as it develops plans to conduct reviews of its rules. In addition to the factors outlined in its review plan, the CFPB’s review under the RFA should specifically consider the rule’s impact on competition and consumers. A rule that impedes competition and consumer benefits, such as overdraft and electronic transfer services, could cause a significant economic impact on a substantial number of small entities, including credit unions. As such, the CFPB’s 610 review plan should focus on weighing market conditions with current small entity industry practices. More importantly, markets can change dramatically within a 10-year span, whether due to technological innovation or other factors. NAFCU urges the Bureau to consider offering more frequent reviews of its significant rules both under its authority in the RFA and in the Dodd-Frank Act. The requirements in these statutes serve as a floor for reviewing regulations, but nothing in the text of either law prevents the CFPB from reviewing its rules more often.

Credit unions continue to experience increased regulatory compliance costs. A 2018 Government Accountability Office (GAO) survey indicated that credit unions consider several regulatory requirements as overly burdensome, such as reporting mortgage characteristics, reviewing transactions for potentially illicit activity, and disclosing mortgage terms and costs to consumers.¹ GAO found that credit unions frequently experienced compliance burdens, some of which arose from a misunderstanding of the CFPB’s disclosure regulations, which led some credit unions to take actions not actually required by the CFPB. For example, the GAO found that misunderstandings of the CFPB’s Truth-in-Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) Integrated Disclosure (TRID) requirements “could be creating unnecessary compliance burdens for some small institutions.”² Accordingly, the GAO recommended that assessing the effectiveness of the guidance for the disclosure regulations could help mitigate the misunderstandings and in turn reduce compliance burdens. NAFCU recognizes that the CFPB is beginning its assessment of the TRID rule as required under the Dodd-Frank Act, but encourages the Bureau to conduct additional reviews on a more regular basis, particularly with respect to substantial rulemakings that have transformed the way credit unions and other financial institutions must offer their products and services.

Credit unions have reported that several CFPB regulations are time-consuming and costly to comply with, in part because the requirements are complex, require individual reports that have to be reviewed for accuracy, or mandate actions within specific timeframes. Importantly, these

¹ GAO, *Community Banks and Credit Unions: Regulators Could Take Additional Steps to Address Compliance Burdens* (February 2018), 20 <https://www.gao.gov/assets/700/690028.pdf>

² *Id.* at 29.

regulations do not take into account the unique structure of credit unions. There is no regulator more familiar with credit unions than the National Credit Union Administration (NCUA). Therefore, NAFCU supports a strong, independent NCUA as the primary regulator for credit unions. With the NCUA as their regulator, credit unions will better serve their members and underserved communities. Accordingly, NAFCU will continue to urge the CFPB to use its exemption authority under the Dodd-Frank Act to exclude credit unions from burdensome, one-size-fits-all rulemakings.

Bureau's 610 Review

NAFCU supports continued periodic review of the CFPB's 610 review plan to enable it to tailor its 610 reviews to align appropriately with changing market conditions. As such, NAFCU supports the CFPB conducting a thorough evaluation of its final rules under its 610 review plan. Specifically, it is imperative that the CFPB collects relevant information from industry stakeholders prior to determining whether the rule under review causes significant economic impact on a substantial number of small business entities. The RFA requires federal agencies, including the CFPB, to assess impacts and costs of their rules, but does not require the agencies to formally assess the benefits and costs of alternative regulatory approaches or the reason for selecting one alternative over another. Accordingly, NAFCU supports the CFPB exercising its discretion to request additional data from relevant parties on a voluntary basis to conduct a cost-benefit analysis of its rules under review, including 610 reviews. Prior to determining whether a rule under 610 review should be continued without change, or should be amended or rescinded, the CFPB also needs to evaluate whether the data collected is up-to-date and reflects the most current industry practices.

NAFCU supports the CFPB's evaluation of specific data that affects smaller entities, like credit unions. According to NAFCU's 2018 Report on Credit Unions,³ the median credit union manages only \$33 million in assets and has just eight full-time employees. In contrast, the median bank has over \$210 million in assets and 45 full-time equivalent employees. The largest bank is over 23 times the size of the largest credit union. Credit unions are also unique institutions that serve a valuable purpose in the financial services industry. As member-owned, not-for-profit cooperatives, credit unions have a long history of operating responsibly and in the best interest of their members, offering products and services to many consumers that have been turned away by banks. As a result of this unique structure and limited resources, credit unions have been significantly impacted by CFPB rules. Therefore, any one-size-fits all rule that does not take into consideration the impacts on credit unions will substantially affect their over 117 million consumers. NAFCU urges the CFPB to focus on gathering more direct data on the impact of final rules on credit unions.

Two potentially significant impacts of a final rule are the hindrance of competition and limitation of beneficial services to consumers. NAFCU's comment letter, dated July 1, 2019, on the CFPB's Overdraft Rule highlights the burdens imposed by the Overdraft Rule on credit unions and urges the Bureau to assess the value of overdraft services to credit union members.⁴ As indicated in the

³ 2018 NAFCU Report on Credit Unions.

⁴ NAFCU CFPB Overdraft Comment Letter (July 2019).

letter, when reviewing its Overdraft Rule under the RFA, the CFPB underestimated the value of overdraft and consumer preferences. Instead, the CFPB's review of its Overdraft Rule relied on whitepapers and reports that referenced the same dataset, collected from banks with over \$10 billion in assets.⁵ The CFPB's review of its rules under the RFA should consider not just the costs associated with certain financial services products, but also consumer benefits, including those essential to credit union members. When reviewing these rules, it is critical for the CFPB to collect diverse data, including data from credit unions. Credit unions remain committed to prudently serving communities and acting as a source of credit for consumers and small businesses. Accordingly, NAFCU urges the CFPB to focus its efforts on identifying opportunities for relief for small entities instead of imposing additional burdensome and unnecessary requirements.

Other Rules Not Subject to 610 Review

The CFPB should also review the adverse impacts on small entities associated with other rules not subject to 610 review. As previously mentioned, credit unions continue to face unnecessary regulatory burdens. For example, many credit unions have stopped offering remittance transfer services due to the Bureau's Remittance Rule. When assessing the Remittance Rule, the Bureau conducted a voluntary industry survey, including credit unions.⁶ Based on the Bureau's assessment, "[i]f many credit unions chose to limit the transfers they provide to 100 or fewer to stay under the threshold, [...] the number of credit unions transferring just below 100 remittances [would] be substantially larger than the number transferring just over 100."⁷ Meaning, credit unions will be limiting remittance services to their members because of the compliance costs associated with the Remittance Rule. The Bureau noted that commenters suggested the Bureau improve its industry survey to obtain information about the Rule's effect on remittance service offerings and the frequency and nature of consumer complaints.⁸ As such, the Bureau should conduct more consistent reviews of its rules (e.g., gathering specific data from credit unions on all rules under review) as a way to reduce burdens on small entities. Accordingly, NAFCU supports the CFPB's long-term efforts to review its inherited regulations to ensure that outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed. Credit unions and their members would benefit from actions that would reduce unwarranted regulatory burden and enable credit unions and the market in general to operate efficiently, transparently, and competitively.

NAFCU appreciates the Bureau's focus on reviewing not only the 610 review plan but also rules that are not subject to the 610 reviews. In addition to limiting services to current credit union members, the costs associated with compliance of unnecessary regulations prevents credit unions from serving underserved communities. For example, many underserved consumers rely on

⁵ CFPB Study of Overdraft Programs: A White Paper of Initial Data Findings (June 2013), https://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf; CFPB, "Data Point: Checking Account Overdraft," (July 2014), http://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf; CFPB, "Data Point: Frequent Overdrafters," (August 2017), https://files.consumerfinance.gov/f/documents/201708_cfpb_data-point_frequent-overdrafters.pdf.

⁶ CFPB, Remittance Rule Assessment Report (April 2019), 25 https://files.consumerfinance.gov/f/documents/bcfp_remittance-rule-assessment_report_corrected_2019-03.pdf

⁷ *Id.* at 136.

⁸ *Id.* at 161.

Bureau of Consumer Financial Protection

July 12, 2019

Page 5 of 5

prepaid accounts to avoid the higher costs associated with traditional products or financial services. As such, a highly regulated prepaid account environment negatively impacts these financially vulnerable communities by forcing credit unions to discontinue prepaid products. Accordingly, NAFCU encourages the CFPB to identify other opportunities to clarify ambiguities, address developments in the marketplace, and modernize regulations that affect small entities.

Conclusion

NAFCU appreciates the opportunity to comment on the CFPB's plan for 610 reviews. NAFCU continues to emphasize the importance of a regulatory environment that does not inhibit credit unions from providing consumers and small businesses access to credit. If you have questions, please contact me at mmakonnen@nafcuhq.org or (703) 842-2222.

Sincerely,

A handwritten signature in black ink, appearing to be 'MM', with a long horizontal line extending to the right.

Mahlet Makonnen
Regulatory Affairs Counsel