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National Association of Federally-Insured Credit Unions

August 22, 2022

Comment Intake—Relationship Banking
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Request for Information Regarding Relationship Banking and Customer Service; Docket No. CFPB-2022-0040

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Consumer Financial Protection Bureau's (CFPB) request for information (RFI) regarding relationship banking and customer service. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 131 million consumers with personal and small business financial service products.

By virtue of their cooperative structure and not-for-profit mission, credit unions are naturally inclined to embrace relationship banking and high touch business models. The unique governance of credit unions also supports a culture of superior member service. Credit union members elect volunteer boards of directors under a principle of "one member one vote," and this democratic framework supports a greater degree of accountability than might be observed within a financial institution owned by shareholders. Because credit union leaders are directly answerable to the credit union's member-owners, investments in member service are a high priority, and this focus has earned credit unions a reputation as safe, friendly and affordable financial institutions for main street consumers.

General Comments

Credit unions continue to grow in membership and assets, but in relative terms make up a small portion of the financial services marketplace. Call Report data from the end of 2021 shows that total assets of federally insured credit unions (FICUs) are substantially less than the total assets of banks insured by the Federal Deposit Insurance Corporation (FDIC).[1] In 2021, the median bank had more than five times as many employees and more than six times as many assets as the median credit union.[2] Despite these differences in scale, credit unions are dedicated and inclusive community lenders that have occupied a stable share of the domestic financial marketplace for decades.[3]

[1] *Compare* NCUA, December 2021 Call Report *with* FDIC, Quarterly Banking Profile: Fourth Quarter 2021. $2.06 trillion compared with $23.7 trillion for banks.
[2] *See* NAFCU, 2021 Report on Credit Unions, 9 (2021) *available at* https://www.nafcu.org/sites/default/files/2021%20Fed%20Report_Digital(1).pdf.
[3] *See id*.

A key factor behind the growth and success of credit unions is the industry's emphasis on relationship banking, a model of service that developed as a natural corollary to limited fields of membership. When the Federal Credit Union Act was enacted in 1934, field of membership limits were regarded as a credit-enhancing feature premised on the credit union's close bond with and understanding of the individual members it served. In retrospect, as modern credit reporting tools have come into existence, some now regard these restrictions as less than complementary to modern notions of safety and soundness.[4] Nevertheless, a link to defined fields of membership places heightened emphasis on service models that are, by necessity, highly responsive to local needs and changing demographics.[5] The superior quality of credit union service is reflected in various forms: the growth of total credit union members over the last decade, growth in total industry assets, and industry surveys.[6] One recent report surveying how consumers viewed the performance of their financial institutions noted that among the top 10 financial institutions that performed best in customer service, six were credit unions.[7]

A foundational aspect of relationship banking is the physical presence of an institution within the communities it serves. In this respect, credit unions also outperform. Credit unions continue to invest in brick-and-mortar branches and staffed call centers even as digital banks and fintech companies shift customer-facing operations into purely digital domains. For example, credit unions grew their physical branch presence in rural areas between 2012 and 2019 as banks decreased rural branches.[8]

Investments in call center operations also play an important role in supporting high quality member service. During the COVID-19 pandemic, forty-three percent of NAFCU surveyed credit unions reported that they increased call center staffing in order to address member call volume.[9] In an August 2022 survey, 62 percent of NAFCU-member credit unions said that they had increased the number of call center employees in the past 2-3 years.[10] These investments aligned with respondents' observations that telephone communication was the preferred channel for credit union members who needed to resolve a problem with a product or service. On average,

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[4] *See* Darryl Getter, "The Credit Union System: Developments in Lending and Prudential Risk Management," Congressional Research Service Report R4360, 4-5 (May 15, 2020), *available at* https://crsreports.congress.gov/product/details?prodcode=R46360.
[5] *See* NAFCU, Report on Credit Unions, 71.
[6] At the end of 2012, there were 92.5 million credit union members. Today there are 131 million. Some sources attribute extraordinary growth within the credit union industry to "disillusionment" with traditional banking options. *See* Ken McCarthy and Rucha Khole, "Membership surges as credit unions welcome banking outsiders," S&P Global (Jan. 14, 2019), *available at* https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/membership-surges-as-credit-unions-welcome-banking-outsiders-49106634.
[7] *See* Stewart Bowling, "Humanizing the bank customer experience: who does it best?" American Banker (Aug. 15, 2022), *available at* https://www.americanbanker.com/list/humanizing-the-bank-customer-experience-who-does-it-best.
[8] *See id*. at 73. Extending research from a recent report by the Federal Reserve, between 2012-2019 community banks decreased rural branches by 5% and large banks decreased rural branches by 19%; credit unions grew their branch presence in rural areas by 2% over that span. *See also* Board of Governors of the Federal Reserve, "Perspectives from Main Street: Bank Branch Access in Rural Communities," (November 2019), *available at* https://www.federalreserve.gov/publications/november-2019-bank-branch-access-in-rural-communities.htm.
[9] NAFCU, 2021 Report on Credit Unions, 29.
[10] NAFCU, Economic & CU Monitor (Aug. 2022).

respondents reported that their response times were fast, with typical call center wait times of less than 2.5 minutes. This responsiveness, enabled by investments in staffing or other customer service technologies, has left a positive impression with members and earned credit unions a favorable reputation among consumers.

Credit unions pursuing more traditional customer service investments often pair these with digital strategies. Some credit unions are using AI solutions to improve chat-based customer service channels, and 57 percent of NAFCU-surveyed credit unions anticipate making AI investments over the next two years.[11] These developments indicate that credit unions are committed to supporting high touch member interactions, but also interested in leveraging technology to enhance existing models of relationship banking. Accordingly, the CFPB should be careful not to discourage the use of digital channels for responding to consumer inquiries, as these can improve service models through automation, increased accuracy, and streamlined resolution of common issues or questions.[12] Instead, the CFPB should accommodate the use of new technologies that allow smaller community financial institutions, such as credit unions, to make the most of limited resources while still offering high quality customer service.

The CFPB must also hold fintech companies accountable for substandard customer service practices that could harm consumers or ultimately shift the burden of resolving customer inquiries onto credit unions and other account holding institutions. As noted in NAFCU's letter to the CFPB regarding the agency's "Inquiry Into Big Tech Payment Platforms," the association supports the CFPB's use of its market monitoring authority to better understand the consumer compliance and business practices of technology companies offering payment services.[13] The rules and expectations that apply to traditional financial institutions must apply to all participants in the financial sector and the CFPB should utilize its investigative powers to ensure that a level playing field exists for credit unions and fintech companies alike.

The CFPB should also recognize that the technological foundation for modern relationship banking, the credit union's core technology platform, is substantially influenced by the business priorities of core providers. Furthermore, upgrades or enhancements to a credit union's core is not always within the credit union's control, and even when optional features are available, they can be cost prohibitive to implement. One NAFCU credit union with approximately $100 million in assets expressed concern about the high cost of updating a disclosure specifying the minimum payment amount for a credit card product. Technological friction that exists between credit unions and technology service providers can degrade the quality of relationship banking and the CFPB should consider investigating whether small community institutions have sufficient bargaining power to maintain technological parity with larger institutions or fintech companies that may be less dependent on third parties. Flexibility within a credit union's core system is not only important

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[11] *See id.* at 60.
[12] *See* Peterson, Charlie, "Increasing Revenue & Enhancing Member Experience With AI" Credit Union Times (Feb. 7, 2022), *available at* https://www.cutimes.com/2022/02/07/increasing-revenue-enhancing-member-experience-with-ai/.
[13] *See* NAFCU, Letter re: Notice and Request for Comment Regarding the CFPB's Inquiry Into Big Tech Payment Platforms (Docket No. CFPB-2021-0017), *available at* https://www.nafcu.org/comment-letter-cfpb-inquiry-big-tech-payment-platforms-File.

from a business operations standpoint, but also influences the quality of customer service by determining how much of a customized experience the credit union can provide to its members.

Regulation E Related Inquiries and Fintech Accountability

Whether large technology companies are sufficiently staffed to handle consumer complaints is a question relevant to both consumers and credit unions, particularly given the volume of consumer complaints catalogued by the Bureau which involve companies named in the "Big Tech" Orders.[14] Credit unions have reported that when members assert payment errors (as defined in 12 CFR § 1005.11) that involve platforms operated by nonbank payment service providers, a payment provider's lack of customer support staffing will often drive the consumer to contact their credit union instead. Underinvestment in complaint management systems by nonbank payment providers may incentivize users of these services to seek help from another, more responsive party to resolve transaction disputes and errors. NAFCU has observed that this party is often a credit union or other primary financial institution. For most users of nonbank payment services, the delineation of error resolution responsibilities is not a consideration (and hardly clear), so the choice to contact their credit union instead of the payment service provider is often driven by the positive experience of previous customer service interactions with the credit union.

Credit unions put their members first as community-focused organizations and strive to provide a high level of personalized service; however, this commitment cannot scale indefinitely to encompass resolution of large volumes of payment disputes that do not meaningfully involve the credit union. It is even less likely this burden could be sustained if the CFPB were to adopt new guidance interpreting Regulation E in a way that shifts even greater liability onto financial institutions.[15] Sometimes consumers will contact their credit union regarding billing errors that do not implicate the credit union at all. This behavior is reinforced when large technology companies steer their users towards chat-based systems to resolve complaints or questions and the affected user simply desires to speak to a human representative.

Payment service providers that operate marginal customer service operations relative to the total transaction volume on their platforms place an unfair burden on credit unions that have responsibly invested in call centers and compliance management systems. Credit unions must divert valuable staff and investigative resources when their members seek resolution of transaction errors that involve third party payment platforms. As the consumer gets the benefit of the doubt when making an unauthorized transaction claim, credit unions often look to gather information from the payment service provider as part of their investigation into whether the transaction was authorized. When this occurs, the burden and responsibility of investigating the error shifts away from the party best equipped to research the transaction and potentially frustrates the goal of efficient error resolution.

For consumers, such inefficiency could mean that certain "mistaken" transfers will more likely result in loss of funds because they failed to immediately contact the payment service provider

[14] Among the recipients of the CFPB's October 2021 Orders, two of the named companies have generated nearly 10,000 complaints related to money transfers, virtual currency, or money services. *See* CFPB, Consumer Complaint Database.

[15] *See* NAFCU Letter re: Regulation E Guidance (Aug. 17, 2022), *available at* https://www.nafcu.org/letter-cfpb-regulation-e-guidance-File.

who may be in a better position to investigate the error and provide favorable resolution. For credit unions, a burden exists insofar as limited staff resources are used to address the customer service shortcomings of much larger fintech companies.

NAFCU has heard from its members that certain payment service providers do little to facilitate investigations even when they do share Regulation E responsibilities. In an August 2021 survey of NAFCU's members, a significant share of respondents indicated that when investigating certain unauthorized transactions, access to information possessed by a third party would have been beneficial. However, respondents also indicated that the availability of such information was not always guaranteed. Among respondents that requested information from a third party to support their Regulation E error resolution obligations, a majority reported that the third party was "rarely responsive."

To rectify the lopsided allocation of Regulation E compliance obligations between credit unions and fintech payment service providers, the CFPB should devote particular attention to the complaint data and metrics it collects through targeted orders to determine whether resolution of electronic fund transfer errors or billing errors by large technology companies matches the expectations for supervised and examined financial institutions. The CFPB should also consider exercising its larger participants authority to ensure that nonbank technology companies offering payment services are appropriately supervised given their size and influence in markets for consumer payments.

Relationship Banking and Fair Competition

As the Bureau acknowledges in the RFI, relationship banking is an aspirational model of banking "that can play a critical role in helping to foster fair, transparent, and competitive marketplaces."[16] NAFCU generally agrees that responsiveness to consumer inquiries is a foundation of fair markets, provided those inquiries genuinely reflect the needs of consumers rather than the business aspirations of data aggregators. Stated differently, the CFPB should be cautious of interpreting its mandate to promote competitive markets in a way that negates the value of data stewardship and the investments needed to form a consumer relationship—such as by granting third parties an unlimited right to request sensitive consumer data on a consumer's behalf.

As noted in NAFCU's comments to the CFPB regarding the agency's advanced notice of proposed rulemaking on "Consumer Access to Financial Records," the development of innovative personal finance products can be achieved with responsible access to consumer data.[17] However, such innovation must be fair and safe for the consumer and the credit union. To the extent that the Bureau's recognition of the rights in Section 1034(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) intersect with the data portability regime envisioned in Section 1033, NAFCU urges the CFPB to avoid interpreting either statutory provision in a way

[16] CFPB, Request for Information Regarding Relationship Banking and Customer Service, 87 Fed. Reg. 36828, 36829 (June 21, 2022).
[17] NAFCU, Letter to CFPB re: Consumer Access to Financial Records; RIN: 3170-AA7 (Feb. 4, 2021), *available at* https://www.nafcu.org/comment-letter-cfpb-consumer-access-financial-records-File.

that limits credit unions' existing discretion to define the scope of data sharing arrangements to best serve their members.

Today the use of AI and machine learning, in conjunction with widespread availability of mobile devices, has the potential to project high-touch, relationship banking models much further than a network of branches delimited by field of membership constraints. This evolution in the delivery of banking services could increase competitive pressure on credit unions as digital native financial institutions leverage technology to improve market penetration or take advantage of regulatory changes (such as special purpose charters or implementation of section 1033 of the Dodd-Frank Act) to further disaggregate full-service banking models. Credit unions are already subject to competitive pressure from banks and the industry has experienced a trend of consolidation for decades. Interpreting section 1033 to recognize new data access privileges for fintech companies would add to these pressures, which could further reduce consumer access to credit unions committed to relationship banking.

While enhanced data portability can support streamlined integration of financial technology, faster account opening, and automation of credit decisioning processes, it can also lead to greater security risks, particularly when consumers are not able to provide informed consent to third parties seeking data access privileges. As federally supervised and regulated financial institutions, credit unions that choose to share account or transaction data with trusted partners do so by first performing rigorous due diligence, then establish a formal agreement to ensure each party's compliance with applicable law.

Interpreting section 1033 to supersede formal data sharing arrangements risks impairing the benefits of credit union due diligence, particularly if the Bureau intends to recognize a third party's right to request and access data on consumers' behalf. On the other hand, requiring the existence of a contractual agreement in every instance where a consumer chooses to voluntarily share transactional or account information could also create its own set of challenges; for example, by magnifying the bargaining power of larger technology companies which might force smaller institutions to accept unfavorable terms and conditions regarding data rights.

To best accommodate both modes of data exchange (company-to-company versus entirely consumer managed), NAFCU recommends the Bureau seek to preserve credit unions' ability to define the scope of third-party data privileges, as well as channels for data sharing that exist outside of formal contacts. To account for the complex legal questions and risks that would arise when permitting data sharing outside of formal agreements, the CFPB must consider minimum data and privacy safeguards for entities that seek to acquire consumer information but are not subject to the supervision and oversight of a federal banking regulator. For larger participants engaged in consumer financial data aggregation, the CFPB should consider a more robust supervisory framework to ensure ongoing compliance.

Conclusion

High touch service models are well established and natural features of credit unions for whom relationship banking is complementary to a cooperative structure. However, the ability to offer exceptional member service in a competitive marketplace depends on a level playing field where the Bureau's expectations for customer service and complaint resolution are applied equally to all participants, whether they are federally examined credit unions or non-supervised fintech companies. As NAFCU has noted in prior letters, credit union members will often prefer contacting their credit union when they have issues with P2P transfers. An adjustment of regulatory expectations for P2P-related investigations is necessary to alleviate the disproportionate compliance burden credit unions shoulder when this occurs and to hold payment service providers or other fintechs offering account-linked products accountable for poor customer service.

With respect to broader questions concerning access to consumer financial data, which may bear upon a future rulemaking to implement section 1033 of the Dodd-Frank Act, the CFPB must ensure that access to consumer financial records is predicated upon a fair distribution of costs, data security and data privacy responsibilities. In terms of recognizing consumer data portability rights, NAFCU urges the CFPB to tailor the scope of shareable information to protect consumers from misleading financial apps that might exploit section 1033 privileges and to prevent competitive imbalance in a market where data has inherent value.

NAFCU and its members appreciate the opportunity to comment on the RFI. Should you have any questions or require any additional information, please contact me at amorris@nafcu.org or (703) 842-2266.

Sincerely,

Andrew Morris

Andrew Morris
Senior Counsel for Research and Policy