



3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
f: 703.524.1082
nafcu@nafcu.org | nafcu.org

National Association of Federally-Insured Credit Unions

July 2, 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 Guidance and Implementation Support
(Docket No. CFPB-2018-0013)

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 (RFI) regarding guidance and implementation support.

In general, NAFCU appreciates the Bureau's commitment to improving its guidance and implementation support to ease compliance burdens and facilitate resolution of regulatory questions. For many credit unions, the Bureau's small entity compliance guides are essential tools that clarify important aspects of rules in plain language. NAFCU also supports the Bureau's efforts to promulgate guidance that is designed to quickly address unintended errors in its rulemakings; however, we urge the Bureau to undertake future rulemakings with greater care and at a slower pace to ensure that subsequent interpretative fixes are not necessary.

The Bureau should ensure that essential interpretive guidance is consistently organized in rule commentary.

The Bureau currently publishes its Official Interpretations in the *Federal Register* after notice and comment. Official Interpretations are used to clarify regulatory text and provide examples to illustrate application of Bureau rules, while also affording civil liability protections under certain laws for acts committed in good faith reliance on the interpretations. Given the importance of this type of guidance, NAFCU asks that the Bureau ensure that all necessary and useful rule commentary is incorporated in the Official Interpretations so that credit unions can avail themselves of essential civil liability protections.

Occasionally, the Bureau has included explanatory statements in the preamble of published rules, which can be difficult to locate or contextualize when the preamble itself exceeds several hundred pages. To streamline compliance, NAFCU believes that examples or explanations which might otherwise be included in the preamble should be published as Official Interpretations. For

example, if the Bureau believes that it is necessary to publish model forms in a rule appendix, it should also include appropriate fact patterns as Official Interpretations to illustrate how the model forms should be used. However, as a matter of general policy, model forms should be published separately from rules so they can be easily updated or modified without triggering notice and comment procedures.

The Bureau should avoid articulating major requirements or exceptions solely through Official Interpretations, and should ensure that problematic provisions of rules are addressed through amendments, not guidance.

Just as the Bureau should take care to ensure that relevant commentary is not dispersed throughout a rule's preamble, it should also ensure that major requirements or exceptions are not relegated to Official Interpretations. In other words, the Bureau should promulgate significant provisions through regulatory text so that there is no confusion or doubt regarding the intended application of a rule.

When the Bureau has placed significant requirements within rule commentary, such as provisions regarding lender credits, compliance resources are needlessly expended attempting to reconcile regulatory text with Official Interpretations. Furthermore, reliance on rule commentary to patch problematic regulatory text should be disfavored. The Bureau should strive to simplify rules that require lengthy commentary or supplementary guidance.

The Bureau should also consider amendments to rules that are frequently the subject of regulatory inquiries, and should delay the effective date of problematic rules in order to ensure that conflicting requirements or other major implementation concerns are properly addressed. For example, the Bureau's FAQs on bankruptcy issues related to mortgage servicing addressed some, but not all, of the issues raised by NAFCU and other trade groups in connection with the 2016 amendments to the 2013 RESPA and TILA Mortgage Servicing Rules. Furthermore, the FAQs were issued less than a month before the effective date of the new mortgage servicing rules. To ensure that financial institutions have sufficient time to review published guidance before modifying compliance programs, NAFCU urges the Bureau to delay the effective date of rules that are likely to require significant clarification or supplementary FAQs.

The Bureau should make greater use of explanatory fact patterns to illustrate the application of its rules.

NAFCU and our members have often found that when guidance is provided outside of a rule, commentary, or appendices, it tends to merely repeat or summarize the contents of the rule itself. While this type of guidance may draw attention to provisions that deserve special attention, it fails to alleviate uncertainty when a rule does not address a particular set of facts, ignores known ambiguities, or does not recognize interplay with other regulations. To ensure that supplementary guidance achieves its goal of easing compliance burdens, NAFCU recommends that the Bureau utilize explanatory fact-patterns to discuss application of rules in all reasonably foreseeable circumstances.

The Bureau should regularly publish guidance that it develops for public webinars or when responding to regulatory inquiries.

NAFCU and our members recognize that the Bureau will, from time to time, develop internal guidance or stock answers that are used to conduct webinars and respond to regulatory inquiries. Unfortunately, the Bureau has not always published or summarized this type of guidance, which has contributed to a compliance environment where the reliability of nonpublished information must be assumed. Credit unions along with other financial institutions cannot operate effectively when best practices or compliance expectations are not described in writing and are subject to challenge by examiners.

NAFCU recommends that the Bureau publish transcripts of webinar materials and publish—in an indexed document—answers provided through regulatory inquiries. The Bureau should follow the practice of other agencies, such as FinCEN, and compile stock answers in a single FAQ which is periodically updated. In addition, transcripts for webinars or other types of presentations would be helpful for compliance staff who are seeking clarification on a specific issue, but do not wish to review an entire webinar recording.

Conclusion

NAFCU strongly encourages the Bureau to continue publishing guidance and implementation support materials to ease compliance burdens for small entities. We urge the Bureau to publish such materials alongside final rules or—at the very least—well in advance of effective dates. In addition, the Bureau should seek to consistently integrate important rule commentary within the Official Interpretations and rule appendices as appropriate, while ensuring that the operation of the rule itself does not depend on commentary or other supplementary guidance to clarify critical implementation details.

NAFCU appreciates the opportunity to provide comments on this request for information regarding Bureau Guidance and Implementation Support. If you have any questions or concerns, please do not hesitate to contact me at 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, flowing style.

Andrew Morris
Regulatory Affairs Counsel