



**National Association
of Federal Credit Unions**
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NAFCU | Your Direct Connection to Education, Advocacy & Advancement

September 2, 2014

Mr. Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, D.C. 20551

RE: EGRPRA, Docket No. OP-1491

Dear Mr. Frierson:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents federal credit unions, I write to you regarding the Board of Governors of the Federal Reserve System's (Board) notice of regulatory review and request for comments under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA).

NAFCU appreciates the Board's efforts in conducting this review and would like the Board to eliminate any unnecessary or burdensome regulations, to the extent that the Board can accomplish this consistent with statutory, safety and soundness, and consumer protection considerations. Accordingly, please find below NAFCU's specific recommendations for the regulations that are up for the Board's review in this cycle and that pertain to our member credit unions.

I. Availability of Funds and Collection of Checks (Regulation CC, 12 CFR Part 229)

Regulation CC generally sets forth procedures and rules implementing the Expedited Funds Availability Act of 1987. Regulation CC establishes requirements regarding the availability of credit union members' funds, collection of checks, and return processes for credit unions and other financial institutions. Credit unions must disclose to members when they will make members' funds available for withdrawal, and credit unions must provide such disclosures to members prior to members opening a new account. Under Regulation CC, credit unions must also establish procedures to ensure that they comply with all of the regulation's requirements, and must supply these procedures to all employees affected by them.

In general, NAFCU believes that the Board should closely evaluate and modernize the language of Regulation CC in order to bring it in line with the current regulatory framework and

applicable requirements under the Dodd-Frank Act and other regulations. The outdated terminology and requirements still found in Regulation CC are both confusing and misleading for members, and pose serious compliance and safety and soundness concerns.

For example, Regulation CC continues to reference \$100 throughout its text with regard to the amount of funds for next day availability even through a recent amendment to the Expedited Availability of Funds Acts increased this amount to \$200. In addition, the Federal Reserve recently enacted a final rule amending Appendix A to Regulation CC that clarified that there is a single check-processing region for purposes of Regulation CC and there will no longer be any checks that are nonlocal. However, the text of Regulation CC continues to contain language distinguishing between local and non-local checks. The Board should use this review as an opportunity to remove these discrepancies in order to promote greater regulatory clarity and compliance.

This review also provides an opportunity for the Board to re-examine concerns surrounding its 2011 proposal regarding case-by-case holds, notice in lieu of return, and same day settlement requirements. NAFCU would like to reiterate that it does not support eliminating provisions regarding case-by-case holds. Many credit unions employ such holds to protect against bounced checks and, although the absence of non-local checks makes the extended hold period less useful, it is still a useful instrument compared to a complete lack of protection for credit unions.

Further, NAFCU does not support eliminating entirely the notice in lieu of return. Although there are fewer instances where such notice is necessary as the processing system becomes more digitized, there remain instances where the notice serves as the best method available to a credit union returning a check and the additional flexibility thus provides an important and continuing benefit. Finally, NAFCU notes that the Board should not eliminate Section 226.36(f)(1) but should the apply same-day settlement rule to electronic checks. This would allow for greater simplicity and consistency for depository institutions in processing both paper and electronic checks.

II. Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire (Regulation J, 12 CFR Part 229)

Regulation J generally sets out requirements for credit unions and other depository institutions to collect checks and other items and to settle balances through the Federal Reserve System. The regulation specifies terms and conditions under which the Federal Reserve Banks receive items for collection from, and present items to, depository institutions. Further, Regulation J works alongside Regulation CC to establish the requirements for depository institutions to return unpaid checks through Reserve Banks. Finally, Regulation J addresses the terms under which the Federal Reserve Banks receive and deliver funds over Fedwire.

NAFCU would like to restate its opposition to the Board's proposed changes to Regulation J that would change the settlement time for paying banks to as early as 8:30 a.m. Eastern time. This change is likely to lead to an increased number of daylight overdrafts for certain credit unions and, accordingly, increased fees for such credit unions. As member-owned, not-for-profit

entities, credit unions do not often have access to the same sources of early morning funding as other financial institutions, and holding higher balances with the Federal Reserve or incurring daylight overdraft fees will necessarily directly impact member returns.

III. Reserve Requirements of Depository Institutions (Regulation D, 12 CFR Part 204)

Regulation D generally imposes reserve requirements on depository institutions with transaction accounts or nonpersonal time deposits, and requires reporting to the Federal Reserve. The regulation aims to facilitate monetary policy and ensure sufficient liquidity in the financial system. It requires credit unions to reserve against transaction accounts, but not against savings accounts and time deposits.

NAFCU believes the Board should take this opportunity to revisit the transaction limitation requirements for savings deposits. The six-transaction limit imposes a significant burden on both credit union members in attempting to access and manage their deposits and credit unions in monitoring such activity. Member use of electronic methods to remotely access, review and manage their accounts, as well as the contemporary transfer needs of members and consumers at all types of financial institutions, make a monthly transaction limit an obsolete and archaic measure. Should the Board decide not to remove the transaction limitation requirement for savings deposits, NAFCU urges the Board to raise the current limitation from six to twelve transactions. In addition, to the extent that the Board maintains the transaction limit or chooses only to increase it, rather than eliminating it altogether, NAFCU urges the Board to revise Regulation D to better or explicitly define the term “occasional basis” as it relates to members who exceed the limit. Current guidance on this issue is scant and does not provide sufficient regulatory clarity or certainty for credit unions attempting to comply with this regulation.

IV. Reimbursement for Providing Financial Records, Recordkeeping Requirements for Certain Financial Records (Regulation S, 12 CFR Part 219)

Regulation S generally establishes the rates and conditions for reimbursement of reasonably necessary costs incurred by credit unions and other financial institutions in providing member or customer financial records to a government authority. It establishes that a government authority seeking access to member or customer financial records must reimburse the financial institution for reasonably necessary costs directly incurred in reproducing or transporting data. Such costs cover the time spent locating, retrieving, reproducing, and preparing data, but do not cover analysis or legal advice. Under the regulation, a financial institution does not receive reimbursement, however, for costs incurred in providing financial records related to security interests, government loan programs, or for certain other records.

NAFCU believes that the Board should reexamine the current reimbursement structure provided by Regulation S and improve the rates and conditions under which credit unions receive reimbursement. As member-owned, not-for-profit entities, every regulatory cost incurred by a credit union directly affects the rate of return enjoyed by its members. Further, credit unions already incur significant regulatory costs in complying with the financial reporting requirements of their prudential regulator, the National Credit Union Administration (NCUA). Regardless of

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whether the Board decides to improve the current reimbursement conditions, it should work with the NCUA and other government agencies to encourage more efficient access to, and requests for, credit union financial data already available to the government in order to avoid unnecessary expenses to credit unions and, accordingly, the need for the government to engage in reimbursement.

NAFCU appreciates the opportunity to provide our comments. Should you have any questions or concerns, please feel free to contact me at ameyster@nafcu.org or (703) 842-2272.

Sincerely,

A handwritten signature in black ink, appearing to read "Angela Meyster", with a long horizontal flourish extending to the right.

Angela Meyster
Regulatory Affairs Counsel