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To: John F. Morrall III/OMB/EOP@EOP

cc:

Subject: NAFCU's **Official** Comment Letter on **OMB's** Draft Report to Congress

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Attached please find NAFCU's official comment letter on OMB's request for comment on its draft report to Congress on the Costs and Benefits of Federal Regulations. Please contact me if you have any problems receiving this document.

> _____
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May 28, 2002

John Morrall
Office of Information and Regulatory Affairs
Office of Management and Budget, NEOB
Room 10235
725 17th Street, NW.
Washington, DC 20503

Dear Mr. Morrall:

I am writing on behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions, in response to the Office of Management and Budget's (OMB) request for comment on its draft report to Congress on the Costs and Benefits of Federal Regulations. NAFCU appreciates the opportunity to comment on this report.

OMB is calling for public nominations of regulatory reforms to specific existing regulations that, if adopted, would increase overall net benefits to the public, considering both qualitative and quantitative factors. This provides an excellent opportunity for the federal credit union community to comment upon some of the areas that are in particular need of reevaluation. NAFCU has included on the following pages information on five areas of federal regulation that could benefit from a reevaluation. This information has been provided in the format OMB requested.

NAFCU would like to thank OMB and the Bush Administration for this opportunity to share its views on regulatory reform to specific existing regulations. Should you have any questions or require additional information, please call me or Eric Envall, NAFCU's Regulatory Compliance Counsel, at (703) 522-4770 or (877) 623-2887, ext. 234.

Sincerely,

Fred R. Becker, Jr.
President/CEO

FRB/eme

Attachment

NAFCU's Recommendations for Regulations in Need of Reform

Name of Regulations: Regulations B, E, M, Z and NCUA's Truth in Savings

Regulating Agencies: Federal Reserve Board, National Credit Union Administration

Citation: Regulation B Staff Commentary 12 C.F.R. § 202.17(d)(1)
Regulation E Staff Commentary 12 C.F.R. § 205.17(c)(1)
Regulation M Staff Commentary 12 C.F.R. § 213.17(c)(1)
Regulation Z Staff Commentary 12 C.F.R. § 226.36(d)(1)
NCUA Rules and Regulations Staff Commentary 12 C.F.R. § 707.10(d)(1)

Authority: Equal Credit Opportunity Act 15 U.S.C. § 1601 et seq.
Electronic Funds Transfer Act 15 U.S.C. § 1693 et seq.
Consumer Leasing Act 15 U.S.C. § 1601 et seq.
Truth in Lending and Fair Billing Act 15 U.S.C. § 1601 et seq.
Truth in Savings Act 12 U.S.C. § 4301 et seq.

Description of Problem: Interim final rules issued by the Federal Reserve Board on March 29, 2001 amended the Official Staff Commentary of these regulations to define "electronic address" as an e-mail address that is not limited to receiving communication transmitted solely by the creditor. This specifically excludes addresses that *are* contained at a financial institution's website. Many financial institutions implemented electronic systems that may be accessed through the financial institution's web site in order to deliver the required disclosures in a secure manner. The current definition of electronic address requires a financial institution to use a traditional e-mail address only when utilizing electronic disclosure methods.

NAFCU believes it is vitally important, and furthermore statutorily mandated, that regulations implemented in the arena of electronic communications remain flexible. Section 104 of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) states that the Federal Reserve Board may not "require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating or authenticating electronic records or electronic signatures." By requiring that disclosures, or notice of disclosures, be delivered to a specific form of email address, the Board is requiring that financial institutions use a specific technology. NAFCU believes that the Board has violated both the plain wording and the intent of the E-Sign Act by requiring the use of an email address that is not limited to receiving communications transmitted solely by the financial institution. On August 3, 2001, the Federal Reserve Board lifted the mandatory compliance date imposed by the interim final rules. However, the Board has indicated it will take action in the near future on these rules.

Proposed Solution: NAFCU proposes an expansion of the definition of "electronic address" to include website electronic addresses and not limit the definition to solely traditional e-mail addresses.

Estimate of Economic Impacts: The limitation of the definition of "electronic address" imposes a cost on financial institutions. Financial institutions will likely need to purchase and administer e-mail content encryption software to prevent third parties from reading e-mail messages it sends. A financial institution will also incur higher costs to monitor and maintain e-mail databases if it is unable to use implemented electronic systems that may be accessed through the financial institution's website. These costs may likely be passed on to the public in terms of lower returns on investment and higher rates on loans.

NAFCU's Recommendations for Regulations in Need of Reform

Name of Regulations: Regulations Z and NCUA's Truth in Savings

Regulating Agencies: Federal Reserve Board, National Credit Union Administration

Citation: Regulation Z 12 C.F.R. § 226.17(g)

NCUA Rules and Regulations 12 C.F.R. § 707.4(a)

Authority: Truth in Lending and Fair Billing Act 15 U.S.C. § 1601 et seq.

Truth in Savings Act 12 U.S.C. § 4301 et seq.

Description of Problem: Section **707.4** of NCUA's Truth in Savings regulation requires that credit unions provide account-opening disclosures before an account is opened or a service is provided. However, this regulation permits credit unions to delay delivery of account disclosures up to ten days if the consumer is not present at the institution when the account is opened or the service is provided. The Federal Reserve Board, pursuant to its interim final rules issued on March 29, 2001, has determined that the difficulties in providing disclosures for accounts opened by mail or telephone are not present for requests to open accounts received by electronic communication and, therefore, account disclosures must be provided before the accounts are opened. As the Truth in Savings Act requires NCUA to promulgate regulations substantially similar to those promulgated by the Federal Reserve within 90 days of the effective date of the Federal Reserve's rules, NCUA has amended its Truth in Savings regulation accordingly.

Similarly, section 226.17 of Regulation Z requires that disclosures for closed-end credit be delivered before consummation of the transaction. However, Regulation Z permits creditors to delay delivery of disclosures until the due date of the first payment if the consumer submits a request for extension of credit by mail, telephone or facsimile without face-to-face or direct telephone solicitation. The Board has decided not to extend this delay to requests for credit received by electronic communication.

NAFCU believes there may be situations in which a consumer wishes to apply for a deposit account or credit via electronic means but would prefer not to receive the related disclosures electronically. Pursuant to the interim final rules, a financial institution would be required to delay the opening of a deposit account **or** consummation of a closed-end loan if the consumer did not consent to receiving disclosures electronically. However, that same consumer could then apply for **the** product via telephone, mail or facsimile and obtain access to **the** account and/or funds without having to wait for disclosures. NAFCU is concerned that this result will discourage some consumers from utilizing electronic means of account or loan application.

Proposed Solution: NAFCU proposes that the mail/telephone/facsimile delay to the delivery of account disclosures be applied in these circumstances.

Estimate of Economic Impacts: The discouragement of consumers from utilizing electronic means of account or loan application will result in higher costs to financial institutions through the processing of more paper applications. These costs may likely be passed on to the public in terms of lower returns on investment and higher rates on loans.

NAFCU's Recommendations for Regulations in Need of Reform

Name of Regulation: Regulation C
Regulating Agency: Federal Reserve Board
Citation: Regulation C Appendices A & B to **Part** 203
Authority: Home Mortgage Disclosure Act 12 U.S.C. § 2801 et seq.

Description of Problem: Under a recent proposed rule, the Federal Reserve Board would require lenders to request data on race, ethnicity and sex when an application is made entirely by telephone. Currently, lenders are required to ask this information only for mail and Internet applications.

Requiring such questions to be asked when receiving an application over the telephone is tantamount to taking what already is a race-neutral, ethnicity-neutral and gender-neutral process and imposing upon it the very biases sound public policy seeks to root out. Such inquiries may cause concern to those who might suspect that this information could be a factor in the credit decision, especially if the loan is subsequently denied. Even if telephone representatives ask for government monitoring information properly, applicants may still believe that their responses to these questions will influence the lender's decision. This perception could motivate some borrowers to provide inaccurate information, resulting in unreliable data.

In addition, there are operational concerns about this proposed requirement. Requiring lenders to ask these questions during a telephone application will delay the application process. Under the proposed rule, a telephone representative must ask the questions, explain the purpose of the questions, and document the member's responses. Currently, a high percentage of credit union members who submit Internet or mail applications on which these questions are asked decline to provide this information, despite reassurances that information will not be a factor in the credit decision. NAFCU believes that the results will not be different for telephone applications.

Proposed Solution: NAFCU proposes that the provision requiring lenders to request data on race, ethnicity and sex when an application is made entirely by telephone not be included in any final rule amending Regulation C.

Estimate of Economic Impacts: Financial institutions will likely incur an increase in costs needed to update **HMDA** reporting software programs and provide training to employees to **ask** these questions and to explain the reasons for asking these questions. These costs may likely be passed on to the public in terms of lower returns on investment and higher rates on loans.

NAFCU's Recommendations for Regulations in Need of Reform

Name of Regulation: Regulation C
Regulating Agency: Federal Reserve Board
Citation: Regulation C 12 C.F.R. § 203.4(a)(12)
Authority: Home Mortgage Disclosure Act 12 U.S.C. § 2801 et seq.

Description of Problem: Under recent amendments, Regulation C requires lenders to report the annual percentage rate (APR) spread as defined by the regulation on home related loans. The APR spread is equal to the difference between a loan's APR and the yield on a Treasury security with a comparable maturity. The Federal Reserve Board views this requirement as a less burdensome approach than requiring lenders to report all APRs. Under this final rule, lenders will need to use a formula to compute the APR spread for loans, determine whether or not the spread actually exceeds the prescribed threshold, and then determine whether the APR spread data should be reported. This approach is significantly different and more burdensome than the previous rule. The Federal Reserve Board should have permitted public comment before implementing a more burdensome approach.

Proposed Solution: NAFCU proposes that the provision requiring lenders to report the APR spread be rescinded.

Estimate of Economic Impacts: Financial institutions may incur an increase in costs needed to update HMDA reporting software programs. These costs may likely be passed on to the public in terms of lower returns on investment and higher rates on loans.

Name of Regulation: Regulation D
Regulating Agency: Federal Reserve Board
Citation: Regulation D 12 C.F.R. § 204 et seq.
Authority: Federal Reserve Act 12 U.S.C. § 3105 et seq.

Description of Problem: Inconsistent and complicated definitions of "restricted withdrawals" versus "unlimited withdrawals" make this regulation as a whole confusing and restrictive. The increased use of automatic and electronic services and the difficulty in monitoring the payees on checks are two issues that cause problems for complying financial institutions. This regulation, first established in 1980, does not reflect the realities of today's financial landscape.

Proposed Solution: NAFCU proposes that the Federal Reserve Board prepare and issue for public comment a comprehensive study on revisions to Regulation D.

Estimate of Economic Impacts: NAFCU anticipates minimal economic impact in conducting this study, but NAFCU anticipates significant economic benefits as a result of revisions to Regulation D.