NAVY FEDERAL Credit Union

Office of the President

8 February 2019

Board of Governors of the Federal Reserve
20th Street and Constitution Avenue, NW
Washington DC, 20551

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

Re: RIN 3170-AA31
Availability of Funds and
Collection of Checks (Regulation CC)

Navy Federal Credit Union (Navy Federal) appreciates the opportunity to respond to the proposed rule jointly published by the Board of Governors of the Federal Reserve and the Bureau of Consumer Financial Protection (the Agencies) regarding amendments to Regulation CC. Navy Federal is the nation's largest credit union with more than $97 billion in assets and eight million members, and is resolutely committed to serving the needs and improving the financial condition of our members.

Overview

Navy Federal supports increasing the availability of funds to our members. However, we are concerned that the 2018 proposal would impose significant regulatory burdens on financial institutions if implemented. Further, we do not believe that the 2011 proposal to reduce hold times (reopened as part of the 2018 proposal) will provide financial institutions with adequate protections to prevent fraud. In response to these proposed rules and requests for comment, Navy Federal provides the following comments.

2018 Proposed Rule

The 2018 proposed rule presents a calculation methodology to update the amount of funds to be made available under Regulation CC in order to account for inflation. Navy Federal understands the need to account for inflation, but we believe this proposal significantly underestimates the costs for financial institutions to comply. This proposal would require updates to our branch and ATM signs; new training for all appropriate team members; amendments to our availability of funds disclosures and hold notices; and updates to our software systems. These alterations could cost as much as $350,000.00, which could potentially be applied every five years as availability amounts are recalculated. Additionally, with the

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increase in funds being made available, we would face an additional loss exposure of almost $4.5 million.

Because compliance with this proposal would impose a significant cost, substantially above the estimate stated in the proposal, Navy Federal asks that the Agencies reexamine their estimated costs of compliance before they consider finalizing this rule. We also suggest that the Agencies allow for public comment each time the availability amounts are recalculated. This will allow financial institutions and the Agencies to consider if the calculation continues to be cost effective and to continually ensure that any changes benefit consumers enough to justify the additional costs.

Navy Federal also asks the agencies to pursue statutory changes that would allow them to exercise discretion in determining what amount of change in inflation that would justify amending when, and in what amount, funds could be made available. While we acknowledge that the $25.00 trigger is statutorily prescribed, we do not believe that the current amount of the change provides enough of a benefit to consumers to justify the substantial cost to financial institutions that must modify their systems to comply with the updated amounts. The cost of compliance will ultimately be felt by consumers, and the cost to implement changes in increments of $25.00 would counteract any minimal benefit it may provide. Instead, we encourage the Agencies to only make adjustments based on rounding to the nearest $100.00. We believe $100.00 reasonably balances the benefit consumers may feel against the cost of compliance.

Further, if this proposal is finalized, we request that the initial effective date be extended from April 2020 to April 2021. If implemented, this proposal would necessitate several updates (as noted previously) requiring a significant amount of man hours and the reallocation of resources. Allowing an extra year will help to ensure that financial institutions are afforded enough time to effectively implement these changes, while still safeguarding member information.

2011 Proposed Rule

The Agencies are also seeking comment on a 2011 proposed rule that includes provisions for reducing certain hold times, which shortens the time frame deposited funds must be made available for withdrawal. Navy Federal supports increasing the availability of funds to our members, and has a policy that generally makes funds available as soon possible. However, reducing these hold times by regulation will remove necessary protections and increase the risk of fraud related loss. This would unnecessarily put us and our members at risk.

One provision from the 2011 proposal seeks to reduce the maximum hold period for nonproprietary ATM deposits to four business days and requests comment on whether the distinction between proprietary and nonproprietary ATMs is still necessary. The timing for check returns from nonproprietary ATM deposits is often unpredictable and can vary; four business days is often not sufficient time to learn about the nonpayment of a check before the funds must be made available for withdrawal. In 2018, nearly 50 percent of all our returns occurred after four business days, and approximately 18 percent of all our returns occurred on the fifth business day. Navy Federal would face a substantial increase in loss exposure if this hold time were reduced. Absent significant changes that would result in expedited returns, we urge the Agencies to maintain current hold times.

The 2011 proposal also seeks to shorten the safe harbor for reasonable hold extensions from five business days to two, further limiting necessary protections. Navy Federal believes that a two business day extension simply does not provide sufficient time to determine whether these types of transactions are genuine, and is concerned that reducing the exception hold time so significantly could substantially increase the risk of fraud related losses. This safe harbor is necessary for situations where a heightened risk has been identified. In many instances, this two day exception hold will only result in four days total. As we noted above, nearly half of our returns in 2018 were received after four days. This safe harbor is critical for situations we determine pose a risk to us, and without it we are left significantly more vulnerable to fraud. Accordingly, we request that the Agencies retain the current hold period of five business days.

Conclusion

Navy Federal supports the Agencies' efforts to increase the availability of funds to our members. However, we request that they more carefully weigh the costs against the benefits of this proposal before finalizing the 2018 Proposed Rule. We also strongly encourage the Agencies to maintain current deposit hold times, and are concerned that the 2011 proposal to reduce hold times will not provide financial institutions with adequate protections to prevent losses from fraud. Finally, we note that increasing the amounts made available sooner and lessening protections increases regulatory burden while exposing financial institutions to significantly more risk. We ask the Agencies to more carefully weigh that risk as they proceed with any rulemaking.

Should you or a member of your staff have additional questions about our comments, please contact me, or my point of contact, Mark Lawton, Senior Vice President of Regulatory Compliance and Public Policy, 703-255-8328.

Sincerely,

Mary McDuffie
President/CEO

MM/mjc