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November 25, 2019

The Honorable Kathy Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Model Form A-9 pursuant to the 2009 Overdraft Rule

Dear Director Kraninger:

The Credit Union National Association (CUNA) represents America's credit unions and their 115 million members. On behalf of our members, we are writing to offer a recommendation related to the overdraft opt-in rule under Regulation E at 12 C.F.R. section 1005.17 (2009 Overdraft Rule or the Rule).

The recently released Consumer Financial Protection Bureau (CFPB or Bureau) Fall 2019 Rulemaking Agenda notes an ongoing review of the Rule pursuant to Section 610 of Regulatory Flexibility Act (RFA). CUNA submitted a response to the Bureau's Request for Information (RFI) on the overdraft practices under Regulation E on July 1, 2019. We appreciate the Bureau's commitment to a careful re-examination of rulemakings with an eye toward mitigating economic impact, reducing compliance costs, and clarifying requirements as necessary.

Credit unions offer overdraft programs as a convenience and accommodation for their members' benefit, and members that choose to opt in to overdraft protection services appreciate the peace-of-mind provided by these services. Credit unions strongly oppose any effort to expand the Rule's scope or add additional compliance requirements that would inhibit credit union members' access to desired services. Should the Bureau decide to pursue modest amendments to the Rule, we urge it to do so in a manner that provides credit unions with additional flexibility in providing consumer disclosures and enhanced safe harbor protection for use of the model forms.

One area for improvement is Model Form A-9 (Form A-9). Because the use of Form A-9, or one that is "substantially similar," provides a safe harbor from liability under the Rule, financial institutions are limited in their ability to diverge from the current form, even in ways that provide additional information to consumers. Litigation regarding overdraft protection practices has increased in recent years, in part due to use of the Form A-9 provided in the Rule. In these complaints, the plaintiffs allege the language of the Form A-9 is vague and does not provide clear information about the financial institution's overdraft practices. In responding to these lawsuits, affected financial institutions have been forced to expend financial resources defending the use of the regulator-approved Form A-9—which remains effective under Regulation E.

To address this issue, CUNA recommends the Bureau adopt a more expansive safe harbor from liability for the use of the Form A-9. The Bureau should also update the model form to ensure it

contains clear and concise language regarding standard overdraft protection practices, and permits financial institutions to voluntarily add supplementary information and modifications that bolster consumer understanding of specific practices.

Model forms from the CFPB and other financial regulatory agencies are important compliance tools for financial institutions. Further, model forms that provide clear safe harbors can be invaluable tools for resource-limited credit unions and other community-based financial institutions. We believe it is critical that consumers have accurate, understandable information necessary to inform financial decisions and appreciate the Bureau's commitment to examining whether improvements can be made to the rules within its jurisdiction.

On behalf of America's credit unions and their 115 million members, thank you for the opportunity to share our views. If you have questions or require additional information related to our feedback, please do not hesitate to contact me at (202) 508-3629 or amonterrubio@cuna.coop.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alexander Monterrubio', with a long horizontal flourish extending to the right.

Alexander Monterrubio
Senior Director of Advocacy & Counsel