



Credit Union Regulatory Issues

Talking Points

I. Credit Union Regulatory Burden

- Federal financial regulators should take action to streamline current regulations, eliminate antiquated and inconsistent requirements, provide exemptions for credit unions where appropriate, and curb future regulatory requirements.
- Tailored and focused regulations are especially necessary given the operational pressures caused by the current COVID-19 crisis and its economic fallout.
- Credit unions are consumers' and small businesses' best hope for receiving affordable and fair financial services since their customers are also their owners. This key incentive—that credit union customers are member-owners—is lacking in the for-profit banking industry.

II. NCUA Issues

NCUA Regulatory Activity During COVID-19

- Credit unions support the NCUA's expeditious review of all pending rulemakings that may help the industry provide products and services to members at this critical time. We recognize and appreciate the NCUA's efforts to alleviate regulatory pressures on credit unions during the pandemic.
- To aid NCUA in achieving this, the agency should establish a new Regulatory Reform Task Force to review the agency's regulations and recommend changes to eliminate outdated, unnecessary, or unduly burdensome requirements. The Task Force should include not only NCUA staff, but also representatives from individual credit unions as well as credit union trade associations. Considering the unprecedented operational, economic, and consumer changes resulting from the COVID-19 pandemic, the agency should pursue this new Task Force and regulatory review in the first half of 2022.
- We urge the NCUA Board to proceed with outstanding and future rulemakings aimed at aiding credit unions and their members during the COVID-19 pandemic and beyond.

National Credit Union Share Insurance Fund (NCUSIF)

- As a result of an influx of deposits following the government stimulus to consumers impacted by COVID-19, credit union deposits have swelled and the NCUSIF equity ratio temporarily declined. The equity ratio of the Fund stands at 1.23% and the NCUA projected ratio for December 31 is 1.28%. While this is below the Normal Operating Level (NOL) of 1.33%, it is above the 1.20% threshold that would require the Board to institute

a formal Fund restoration plan. We urge the Board to refrain from pursuing any premium assessments to address this temporary decline that is a result of the pandemic.

- Chairman Harper has called on Congress to change the FCU Act to:
 - Remove the 1.50% statutory ceiling on the Fund’s capitalization;
 - Permit premium assessments when the Fund’s equity ratio exceeds 1.30%; and
 - Institute a risk-based premium system.
- We disagree with each of these suggested amendments, as we believe such drastic changes are unnecessary given the reliability and strength of the NCUSIF over the years.

Net Worth/Prompt Corrective Action Relief

- We appreciate the current interim final rule that provides some PCA relief; this follows a similar interim final rule that expired December 31, 2020. Specifically, the rule:
 - Permits the NCUA Board to issue an order to temporarily waive the earnings retention requirement for any credit union classified as adequately capitalized; and
 - Permits credit unions to submit simplified net worth restoration plans if the reduction in capital was caused by share growth resulting from a temporary condition due to the pandemic.
- The relief provided by the current interim final rule is temporary, expiring March 31, 2022.
- There continues to be a real need for PCA relief. Thus, we urge the NCUA to continue the PCA relief provided by the current interim final rule until the end of the pandemic as determined by the CDC or other federal entity authorized to make such a determination.
- Further, we believe the agency can and should go further by temporarily excluding certain assets from the net worth ratio. Credit unions are increasingly investing member deposits (which have swelled as a result of the pandemic) in zero- and low-risk assets, such as shorter-term Treasury securities. These deposits and resulting investments, however, have caused a decrease in the net worth ratio for many credit unions. Therefore, the NCUA should exclude such investments from the net worth ratio calculation, which can be achieved by amending the definition of “total assets” to exclude them.
- In addition, we urge the NCUA to actively engage Congress to pursue changes to section 1790d of the FCU Act to provide the Board with additional tools to aid otherwise healthy credit unions that encounter crisis-induced PCA challenges. For example, it would be helpful if the NCUA had the flexibility to offer forbearance from PCA for credit unions impacted by a crisis, such as COVID-19.

Succession Planning

- NCUA has a pending proposal that would require FCU boards of directors to establish and adhere to processes for succession planning. The succession plans will help to ensure that the credit union has plans to fill key positions, such as officers of the board, management officials, executive committee members, supervisory committee members, and (where provided for in the bylaws) the members of the credit committee to provide continuity of operations. In addition, the proposed rule would require directors to be knowledgeable about the FCU's succession plan. Comments are due by April 4.
- The proposal would apply solely to FCUs. FISCUs must comply with any state-specific requirements pertaining to succession planning. However, the Board encourages FISCO boards, to the extent compatible with state law, to undertake succession planning efforts to help ensure continued viability of their credit union.
- CUNA is still soliciting input from our members but we question whether approaching this issue through a rulemaking, as opposed to guidance, is most appropriate. Further, it is unclear whether this proposal will achieve the desired effect of decreasing smaller credit union mergers.

Extended Examination Cycle

- Efforts to extend the examination cycle for certain credit unions have been positive, particularly for credit unions for which a 12-month cycle was clearly unnecessary. Since banks are provided an extended examination cycle, credit unions are now at a comparative disadvantage.
- The NCUA should extend the examination cycle for credit unions with under \$3 billion in assets, as is provided for banks under the Federal Deposit Insurance Act, as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act.

Streamlined/Virtual Examinations

- We appreciate the NCUA's efforts to streamline examinations and make operations more efficient, and we urge the agency to continue these efforts. The sudden forced move to offsite/virtual exams has generally been well received by credit unions. Of course, there have been some issues, including challenges associated with collecting and submitting large amounts of data, particularly for smaller credit unions. But generally, credit unions appreciate the efficiencies of virtual examinations.
- Going forward, it is unclear what the NCUA's plan is regarding virtual, in-person, or a hybrid approach regarding examinations. We appreciate a model that is efficient and flexible for credit unions.

NCUA Cyber Examinations

- Cyber and data security is one of the biggest issues currently facing most industries, including financial services. We appreciate the NCUA's recognition of this issue and the agency's commitment to make it a focus area, but should do so while ensuring that credit unions and members benefit from the examinations.
- Cyber exams have become increasingly taxing on resources as the agency focuses on resiliency. CUNA continues to work the agency to provide necessary flexibility and tools to make cyber exams efficient and beneficial to all stakeholders.

NCUA Examination Consistency

- We continue to urge the NCUA to improve examination consistency. The agency should focus on closer collaboration with state regulators regarding examinations of state-chartered credit unions, as well as focus on improved cohesiveness among the regions. Even with the condensed regions under the recent reorganization, there are issues of inconsistent examinations from examiner to examiner and credit union to credit union within the same region.

Working with the CFPB

- We appreciate the NCUA's advocacy on behalf of credit unions.
- We urge the NCUA to continue to request to the CFPB that credit unions with over \$10 billion in assets be transferred to the NCUA for examination and enforcement of consumer financial protection laws.

Modernization of the Call Report

- We support the NCUA's work to modernize the call report. On a going-forward basis, we request the agency continually monitor the call report to determine how it can be further improved.

Digital Currency

- The NCUA should work to ensure that credit unions have the proper guidance to provide digital currency-related services to members. The NCUA should build off its December 2022 Letter to Credit Unions, where the agency states that credit unions can enter into third-party relationships with crypto/digital currency related vendors to include custodial powers for crypto currency.

III. CFPB Issues

Exemption Authority/Tailoring Regulations

- Broad, overly complex regulations strain the finite resources of community-based credit unions and often result in their exit from markets or reduced product offerings. This trend negatively affects consumers' ability to access financial services from reputable providers.
- Congress crafted the Dodd–Frank Act to authorize the Bureau to tailor rulemakings so responsible actors in the financial services marketplace are not negatively impacted.
- The Bureau should use its exemption authority to protect credit union members from one-size-fits-all rulemakings that are inappropriate when applied to the not-for-profit structure of credit unions.

Small Business Lending Rulemaking

In September 2021, the CFPB issued its long-anticipated proposal to require lenders to compile, maintain, and submit data on credit applications by women-owned, minority-owned, and small businesses. The rulemaking is required by Section 1071 of the Dodd-Frank Act, which amends the Equal Credit Opportunity Act (ECOA).

The Bureau's 900-page proposal is complex and includes several provisions that could have an adverse impact on the availability of credit for small business borrowers. In general, the rule applies to any entity originating at least 25 covered credit transactions to small businesses in the prior two calendar years with no exemption based on asset size or other factors.

- While credit unions support the goals of Section 1071 and seek to provide all members with fair and equitable financial opportunities, we are concerned the proposal's low threshold for reporting could create unintended consequences due to increased operational costs. These conditions could result in fewer market participants, especially among smaller lenders, and reduced access to credit for the nation's small businesses.
- Credit unions are legally bound to serve specific fields of membership and must comply with statutory member business lending (MBL) restrictions. As a result, credit union data collected pursuant to any 1071 rule would likely be incomparable with data from other lenders that may legally serve any consumer. The Bureau should account for this difference both in the rule's development and when considering the data it has collected post-implementation.
- We support tailoring this rule to reduce its impact on smaller participants in the commercial loan market and to avoid creating heightened barriers to credit for small business borrowers.

Regulation by Enforcement

In the past, the Bureau engaged in the practice of “regulation by enforcement,” especially in regard to the “abusiveness” standard. The Bureau’s “I know it when I see it” approach resulted in uncertainty in the financial services marketplace and presented due process concerns.

- We support the Bureau taking meaningful steps toward establishing clear standards for and transparency in all aspects of its authority.
- If the Bureau wants to make actionable policy, then it should either propose regulations through the notice-and-comment process or issue policy statements that clarify expectations for regulated entities.

Home Mortgage Disclosure Act (HMDA)

The Bureau has repeatedly acknowledged that credit unions maintained sound credit practices through the economic crisis and did not engage in the practices that led to the crash of the housing market. Nevertheless, in 2015, the CFPB chose to adopt a HMDA Final Rule that disproportionately burdened credit unions with finite resources despite no evidence of past wrongful conduct.

While both the CFPB and Congress recently provided meaningful HMDA relief for smaller lenders, we recommend the Bureau adopt additional accommodations, such as:

- Allow reporting for Home Equity Lines of Credit (HELOCs) to once again be voluntary;
- Reduce the HMDA data set for all reporters to the data points required by statute; and
- Reconsider the privacy balancing test used to determine which HMDA data points are made available to the public in favor of consumer privacy.

Short-term, Small Dollar Lending

Credit unions provide the safest and most affordable loan options for consumers in need of emergency credit. Consumers’ access to emergency credit is especially important given the current environment as evidenced by the joint statement from the federal banking regulators encouraging financial institutions to provide responsible small dollar-lending in response to COVID-19.

- We continue to advocate for the rules governing short-term, small dollar lending to be tailored to address predatory lending practices while not inhibiting credit unions from offering affordable small dollar products to members in need.
- We recommend the CFPB expand the Payday Rule’s partial carve-out for the Payday Alternative Loan I (PAL) program to also cover NCUA’s PAL II program.

Debt Collection

The collection of debts from borrowers is critical to the safety and soundness of any lending institution. Credit unions, as financial cooperatives, collect debts from their member-owners and, in certain circumstances, retain third-party collectors for this purpose. Credit unions' interest in a debt collection rulemaking, therefore, is two-fold: as first-party lenders that are not subject to the Fair Debt Collection Practices Act (FDCPA) and as institutions that may retain third-party lenders that are.

- Credit unions strongly oppose any debt collection rulemaking that would result in the FDCPA, which specifically focuses on third-party debt collectors, being extended to creditors and first-party collectors, either directly or indirectly.
- The Bureau should consider the broad impact of its debt collection rule on consumers and the operations of third-party collectors and seek to limit disruption to this critical function.

Remittances

We support appropriate safeguards for consumers initiating remittance transfers, including clear and understandable disclosures. The Bureau's increase of the rule's "normal course of business" threshold to 500 transfers provided significant regulatory relief to several hundred credit unions. However, the threshold increase should be considered merely the first step toward restoring the market after providers left due to the high cost of compliance with the Remittance Rule.

We recommend the CFPB consider additional substantive amendments to the Remittance Rule. Specifically, the Bureau should:

- Preserve the 500 transfer "normal course of business" safe harbor threshold and consider increasing the threshold to 1,000 remittance transfers; and
- Eliminate the 30-minute cancellation requirement or provide consumers the ability to opt-out of the mandated waiting period.

Financial Education Initiatives

- The Bureau should utilize financial education efforts to guide consumer behavior. This approach, rather than rulemaking to guide consumer choices, provides the foundation for sustainable financial health.

IV. FHFA Issues

Access to the Secondary Market

- The FHFA should continue to ensure that all mortgage lenders have equal access to the secondary market, without volume-based pricing.

- The FHFA should conduct a holistic review of its entire pricing structure and make revisions to ensure that pricing does not make loans more expensive for those least able to afford increases to the cost of credit.
- The FHFA should identify opportunities to make it easier for small credit unions to originate for Fannie and Freddie, for example, by reconsidering the requirement to have dedicated secondary market staff for smaller credit unions.
- The FHFA must work to ensure that credit unions which are members of the San Francisco Federal Home Loan Bank are able to obtain alternative access to the secondary market at fair prices.

Discrimination and Modernization in Appraisals

- We strongly support the intergovernmental PAVE (Property Appraisal and Valuation Equity) task force which is addressing the issue of racial discrimination in appraisals, which is absolutely critical to closing the homeownership gap for Black Americans. Credit unions are committed to that mission. Credit unions are dependent on the quality, objectivity, and reliability of appraisals.
- The FHFA should strongly consider the increased use of technology and data to conduct valuations. In addition to removing the subjective judgment of people, increased automation should also increase the affordability of and access to mortgage loans.

Affordable Housing

- The FHFA should improve its affordable housing programs. For example, reliance on the area median income (AMI) as an income benchmark for these programs fails to capture the economic realities in high-cost neighborhoods and alternative approaches should be available.
- The FHFA should work to improve credit unions' ability to make and sell loans secured by manufactured housing, including instances where loans may be secured by personal property, rather than real property.

V. Payments and Technology

Central Bank Digital Currency

The Federal Reserve released a discussion paper in January 2022 titled "Money and Payments: The U.S. Dollar in the Age of Digital Transformation." This paper requests comment on the impact of the Fed introducing a central bank digital currency (CBDC).

- A CBDC could prove to be transformative to the delivery of financial services as CBDC deposits at a credit union would be more similar to cash held in a safe deposit box than a

traditional deposit, which means that CBDC deposits would not be available for lending activities.

- CBDC would also impact payments as consumers would likely be able to move funds directly without using current payment networks.

Real-time Payments

CUNA has long supported the Federal Reserve developing a real-time payments network. The Fed announced that it intended to develop its network, FedNow, in 2019 and is expected to introduce service in 2023.

- It's important that the Fed operate a real-time payments network as the Fed has a long history of working with community financial institutions on payments.

Interchange

Merchants continue to seek ways to reduce interchange on credit and debit transaction.

- The merchants continue to push for legislation that would implement Durbin Amendment like routing requirements on credit transactions. CUNA and credit unions strongly oppose such legislation that would reduce interchange and fundamentally change how credit cards function.
- The Federal Reserve recently proposed amendments to Regulation II (the regulation that implemented the Durbin amendment) that could impose even more burdensome routing requirements, which could lead to increased compliance costs and reduction in revenue from debit interchange. CUNA is pushing the Fed minimize any amendments to Reg II.

Cryptocurrency / Digital Currency

Credit unions should have a role in providing crypto and digital asset-related services to members. Digital ledger technology allows many industries to innovate, but must come with consumer protections. Congress should explore ways to regulate the delivery of financial services using digital currencies to ensure that consumers are protected in the same way if they received financial services from a financial institution.

- CUNA is pursuing authority for credit unions to provide crypto services to members in a manner that maintains parity with bank authority.
- CUNA is advocating with Congress that non-financial institution providers of crypto services and products be subject to consumer protections laws and not be allowed to use crypto as a way to avoid consumer protection laws.