Credit Union Regulatory Issues

Updated February 13, 2023

I. Credit Union Regulatory Burden

- Federal financial regulators should streamline current regulations, eliminate antiquated or inconsistent requirements, establish exemptions for credit unions where appropriate, and curb regulatory requirements that inhibit member access to desired products and services.

- 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

Third-Party Vendor/CUSO Authority

- Chairman Harper continues to push for Congressional amendments to the FCU Act to provide the agency with direct supervisory authority over TPVs. Citing ongoing concerns to the Share Insurance Fund, we expect this will remain a priority of Harper's throughout 2023.

- We strongly disagree with the need for such authority. The NCUA has effectively managed any risk associated with TPVs within the agency's current regulatory authority. Credit unions are required to perform due diligence on their TPV relationships, and this due diligence is already subject to supervision by the NCUA. Further, we are concerned with an increase in the agency's budget that will certainly be required to obtain/train qualified examiners.

- We understand there may be limited instances where the NCUA's involvement is warranted for supervising critical TPVs that present material risks to the credit union system, but we oppose the NCUA having unlimited authority to supervise all TPVs. As such, CUNA opposes legislative changes aimed at establishing NCUA authority in this area.

FCU Loan Interest Rate Cap

- At its January 2023 meeting, the NCUA Board decided to maintain the FCU loan interest rate ceiling at 18%, where it has been since 1987. (Absent Board action, the rate would revert back to 15% in March.) The rate will remain at 18% through September 10, 2024, unless the Board acts prior to then. The Board made clear that it has the authority to revisit the 18% cap prior to its expiration in 2024, particularly if economic conditions warrant doing so.

- Further, while the Board did not adopt a floating interest rate cap at its January meeting, as CUNA had asked it to consider, it did commit to having staff explore the legality of such a cap and to revisiting the issue at its April Board meeting.

- We continue to urge the Board to remain vigilant with regard to the interest rate ceiling, including monitoring the broader interest rate environment to determine whether the fixed cap should be increased beyond 18% prior to September 2024. Additionally, the Board should provide serious consideration of moving to a floating cap following staff's initial assessment regarding permissibility.

Consumer Compliance Examinations

- The NCUA has indicated it may pursue a dedicated consumer compliance exam program for large credit unions not yet examined by the CFPB. We have significant concern around expanding the agency's consumer protection examination activity without sufficient reason to do so. Altering the agency's risk-focused examination process and substantially increasing consumer examination-related expenditures is simply not warranted.

- The agency should not pursue such exams for several key reasons:

    - As its mission statement makes clear, the NCUA exists chiefly to ensure the safety and soundness of the credit union system. Its examination program should remain focused on that primary objective.

    - The NCUA uncovers and cites occasional individual instances of credit union behaviors and member interactions it deems concerning. This suggests the agency already has—through the risk-focused examination process and consumer complaint hotline—the requisite resources and tools in place to investigate, uncover, and evaluate any deficiencies in an individual credit union's consumer compliance program.

    - Credit unions are the original consumer financial protectors. The unique credit union member-ownership structure and not-for-profit status establishes powerful incentives that discourage anti-consumer behavior. These underlying characteristics set credit unions apart and encourage strong pro-social and pro-consumer behaviors. They provide a clear and powerful deterrent to anti-consumer behaviors.

National Credit Union Share Insurance Fund

- The equity ratio of the Share Insurance Fund stands at 1.26% as of June 30. 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 in the equity ratio. Agency staff projects the equity ratio will increase to 1.30% as of December 31, 2023; this will be announced at the February Board meeting.

- 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 Share Insurance Fund over the years.

Succession Planning

The NCUA has an outstanding proposal that would require FCU boards of directors to establish and adhere to processes for succession planning. CUNA filed a comment letter urging the NCUA address succession planning through guidance rather than regulation.

- The NCUA's 2023 Supervisory Priorities addresses the importance of succession planning but does not go so far as to require it as part of a credit union's examination. Instead, during 2023, examiners will request information about a credit union's approach to succession planning but will not formally evaluate such plans or issue official findings or DORs.
- It appears the NCUA has backed away from finalizing a formal succession plan regulation at this time. We urge the agency to issue additional guidance and refrain from a final rule.

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/Offsite Examinations

- We appreciate the NCUA's efforts to streamline examinations and make operations more efficient, and we urge the agency to continue these efforts. During the pandemic, the sudden forced move to offsite exams was generally well received by credit unions. While credit unions and the agency had no choice but to adapt, there were many positive lessons learned during this phase.

- We urge the agency to leverage these lessons as it transitions away from fully offsite exams. The NCUA noted in its 2023 Supervisory Priorities as well as its 2023 Annual Performance Plan that examiners will continue to conduct "some exam activity" offsite when it can be performed efficiently and effectively. In an effort to make the exam process more efficient and less costly for both credit unions and the NCUA, we urge the agency to give greater weight to offsite exams as it works to strike the appropriate balance between on and off site examination and supervision related activity.

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 improved cohesiveness among the regions, as well as closer collaboration with state regulators regarding examinations of state-chartered credit unions.

- Specifically, NCUA should strive to conduct safety and soundness examinations of federally insured state-chartered credit unions concurrently with examinations by state supervisory authorities.

Central Liquidity Facility

- The CARES Act and Consolidated Appropriations Act enhancements to the CLF have expired. Of major concern is the end of the enhancement allowing corporate credit unions to act as agents for smaller (under $250m), non-CLF member credit unions.

- During the COVID enhancements, the CLF, which serves as a backup source of liquidity for both federal and state-chartered credit unions, provided a necessary lifeline for smaller credit unions, most of which are not CLF members.

- The corporate-agent enhancement expired at the end of last year, despite efforts of NCUA and CUNA to see it extended. We continue to advocate for reintroduction of the COVID enhancements to the CLF.

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 issue guidance allowing credit unions to offer custodial services or wallets to members. Further information on how credit unions can offer cryptocurrency services directly is necessary to maintain parity with other financial institutions.

- The NCUA should add digital asset related services to the list of preapproved permissible activities of CUSOs to allow them to provide cryptocurrency related services.

- The NCUA, as a member of the FSOC, needs to engage with FSOC members, the President's Working Group, and other interagency working groups on digital assets to ensure the interests of credit unions are strongly represented.

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 a reduction in product offerings. This consequence hurts consumers' access financial services from local service providers.

- Congress crafted the Dodd–Frank Act to expressly authorize the Bureau to tailor rulemakings so that responsible actors in the financial services marketplace are not negatively impacted by rules intended for others.
- 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

The CFPB issued a proposed rule that would require commercial lenders to compile, maintain, and submit data on credit applications by women-owned, minority-owned, and small businesses. The rule 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 needlessly complex and includes several provisions that will have an adverse impact on the availability of credit for small business borrowers. In general, the data collection would apply 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 unjustifiably low threshold for mandatory reporting. Setting the threshold too low will substantially increase operational costs for smaller financial institutions engaged in commercial lending. This broad scope will result in fewer market participants and reduce 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 lending market and to avoid creating heightened barriers to credit for small business borrowers.

Fees

CFPB Director Chopra has highlighted so-called "junk fees" as a priority issue for the Bureau. This fees initiative started with an RFI on Fees in January 2022 and has resulted in three separate fee-related rules on the Bureau's agenda for 2023: credit card late fees, overdraft, and NSF fees. The Bureau has characterized a broad range of common fees in consumer financial

services as "hidden" fees that obscure the true cost of financial services and result from a non-competitive marketplace.

- Credit unions offer services that benefit their members and provide the exact type of relationship banking the CFPB Director has stated he wanted to return to. Credit unions are the original consumer financial protectors.

- The financial services market is extremely competitive. Banks, credit unions and financial technology companies (FinTechs) compete every single day, including on fees. To imply consumers are captive is simply untrue.

- All the fees in consumer financial services are subject to rigorous disclosure requirements pursuant to applicable statutes and implementing regulations, many of which are administered by the CFPB itself. The Bureau is well-aware of these requirements, so to claim that consumers are caught unaware of fees or that "true costs" are being "hidden" is misguided.

- The Bureau is not vested with the authority to police competitiveness in the financial services market nor can it establish usury limits or cap fees. We caution the Bureau against regulatory overreach.

- The harm to consumers could be significant should the Bureau move hastily to limit services without fully considering the alternatives available or the potential for unintended consequences.

Ability-to-Repay (ATR)/Qualified Mortgage (QM) Rule

In December of 2020, the CFPB issue a final rule establishing the Seasoned QM category.

In February 2021, the Bureau issued a statement indicating its intention to review and revisit that rulemaking. In July of 2022, the Bureau indicated in a blog post that it intended to review the rule to assess the Seasoned QM category and explore ways to spur streamlined modification and refinancing. In October of 2022 the extended implementation date of the new and more flexible General QM definition passed and, as a result, the "GSE patch" formally sunset. The Bureau has not indicated any activity regarding the ATR/QM rule in is Fall 2022 rulemaking agenda.

- We strongly urge the Bureau to be transparent regarding its rulemaking projects related to the ATR/QM Rule, and to engage stakeholders in discussions on potential policy changes so it can understand potential consequences before it acts.

- We also urge the Bureau to consider the unnecessary expenditures of credit union funds and staff time related to the frequency of the QM rule changes on smaller financial institutions. The Bureau would benefit from allowing these rulemakings to stand for multiple years to obtain meaningful data to support potential future rulemakings.

Regulation by Enforcement

Under prior CFPB Directors, the Bureau engaged in the practice of "regulation by enforcement," especially regarding the standard for "abusive." The Bureau's "I know it when I see it" approach often 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. We continue to advocate for the rules governing short-term, small dollar lending to be appropriately tailored to address predatory lending practices while not inhibiting credit unions from offering affordable small dollar products to members in need.

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 change 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.

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.

Open Banking/1033 Rulemaking

The Open Banking rulemaking grants consumers rights to their personal financial data. Data providers, which include credit unions, would be required to make certain information available to consumers upon request through an online portal or to an authorized third party on behalf of the consumer.

- The Bureau recently released an Outline of Proposals and Alternatives in connection with its SBREFA panel.
- The proposal presents significant concerns regarding the cost and implementation burden on credit unions; risks to the security, privacy, and secondary use of member data; and potential liability for credit unions when transmitting personal financial data to third parties.
- We continue to urge the Bureau to engage in a rulemaking defining larger participants in the aggregation services market.

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 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.

Federal Home Loan Bank System

- The Federal Home Loan Banks (FHLBanks) are a critical source of liquidity for credit unions. There is significant room to improve the FHLBank System, particularly with regard to technological modernization and programmatic efficiency. However, the FHFA should avoid overburdening the FHLBanks balance sheets with inflexible requirements. Further, the individual FHLBanks must be able to exercise their respective discretion with respect to local projects and needs so that they can remain a resilient, elastic, and responsive source for liquidity related to mortgage and community development lending.

- 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 and its Action Plan to address 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.
- The FHFA should approve the GSEs' use of Special Purpose Credit Programs (SPCPs) to assist credit unions in closing homeownership gaps in their communities, including establishing agreements for the purchase of loans made under credit unions' own SPCPs.

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." The creation of a CBDC would fundamentally transform banking and payments.

- Implementation of a CBDC should not proceed without Congressional authorization and a clear structure and novel purpose.
- Any CBDC must utilize an intermediated model that preserves the direct relationship between consumers and financial institutions.
- Deposit substitution and its cascading effects must be sufficiently mitigated as to prevent reduction in the credit supply, to maintain access to affordable credit, and to ensure the safety and soundness of the financial system and the overall economy.

Real-time Payments

CUNA has long supported the Federal Reserve developing a real-time payments network. The FedNow network will be implemented in the summer of 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.

Cryptocurrency / Digital Currency

The digital assets marketplace demands a comprehensive regulatory framework that provides consistent oversight for similar products and services. This approach should be coordinated among the prudential regulators to provide clarity and a level playing field that encourages competition, provides appropriate protection for consumers, and promotes responsible innovation.

- Credit unions should be included in the definition of insured financial institutions for any stablecoin legislation. This should allow credit unions to offer stablecoins and accept deposits backing stablecoins.

Non-financial institution providers of crypto services and products be subject to strict oversight and supervision. This should be accompanied by stringent capital and liquidity requirements, comprehensive data security and privacy requirements, and compliance with all consumer protections laws.

Data Security and Data Privacy

CUNA has long supported a comprehensive national data security and privacy law that includes robust security standards that apply to all who collect or hold personal data and is preemptive of state laws.

V. Community Development Financial Institution Fund

Application Revisions

CUNA supports strong certification standards, however the proposed CDFI Certification Application directly contradicts regulatory requirements and prudential oversight expectations, resulting in a significant number of mission-focused credit unions serving underserved and low-income communities being inappropriately excluded from certification.

- The CDFI Fund should engage with NCUA to better understand credit unions and the requirements of insured depositories to establish Responsible Financing Practices, Accountability, and Target Market Assessment Methodology standards that will not conflict with regulatory and safety and soundness expectations.
- The Fund should pursue a limited number of focused changes and implement those changes through gradual process, such as pilots programs, rather than overhauling the entire application and reporting process at once.
- The Fund must work to reduce the burden of obtaining and maintaining CDFI certification, particularly for smaller credit unions and minority depository credit unions.

CUNA appreciates the CDFI Fund's recent announcement that it would delay the finalization of its CDFI Certification Application so that it has time to thoroughly consider the feedback it has received and consider changes. However, we urge the Fund to engage meaningfully with NCUA and credit unions during this process.

Changes to the application and recertification process have created significant uncertainty for credit unions that have been awarded, but not yet closed on, grants or other awards. Agreements for these awards typically require credit unions to maintain their CDFI certification, or at least to make a good faith attempt to do so. Credit unions have reported that they are certain they cannot recertify under the current application as proposed, and therefore are not certain whether they can accept an award in good faith.

- The CDFI Fund should work with Treasury to clarify that an award will not be clawed back if a credit union is unable to recertify in the future unless it knew or should have known it could not recertify under the current standards.

- CUNA urges the CDFI Fund to establish an Ombuds Office to provide confidential, neutral, and independent sources of information regarding the CDFI certification and grant process. The Ombuds Office could help clarify and mediate confusion for CDFIs experiencing confusion or frustration during the application or recertification process and help improve the function and efficiency of the Fund.

VI. Environment Protection Agency - Greenhouse Gas Reduction Fund

The Inflation Reduction Act authorized a new program at EPA called the Greenhouse Gas Reduction Fund (GGRF). Under this program, Congress directed EPA to provide $27 billion in competitive grants for clean energy and climate projects that reduce greenhouse gas emissions – with a particular emphasis on projects that benefit low-income and disadvantaged communities. EPA has a choice as to how to deploy the funds, and credit unions are best positioned to help the EPA distribute these funds to the projects that need it.

Credit unions and community development financial institutions (CDFIs) serve more than 130 million members in communities across the U.S. – a preexisting, national network of direct relationships to the exact communities the GGRF is targeted to assist. Credit unions and CDFIs have a demonstrated history of working collaboratively to develop products and operations at a scale that achieves exceptional regulatory performance, public trust, and accountability. They also already operate under existing federal and state regulatory structures that allow the EPA to ensure the integrity of the use of funds. As a result, credit unions and CDFIs are ideally suited to leverage EPA funds and implement a responsible, sound loan program that can deploy program funds directly to targeted communities in the most efficient and rapid manner possible.

- Credit unions and CDFIs are seeking Congressional outreach to EPA to advocate for the most efficient use of Fund capital—deployment of a significant portion of the funds through credit unions and CDFIs as a way to assure that those who need the funds the most have efficient, direct access to the program in the most rapid manner possible.