



Jim Nussle
President & CEO

Phone: 202-508-6745
jnussle@cuna.coop

99 M Street SE
Suite 300
Washington, DC 20003-3799

December 6, 2018

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

Dear Director Kraninger:

The Credit Union National Association (CUNA) represents America's credit unions and their 110 million members. On behalf of our members, we would like to send our sincerest congratulations to you on your successful confirmation to a five-year term at the helm of the Bureau of Consumer Financial Protection (the Bureau). CUNA and our members look forward to working with you in your capacity as Director, and we are eager to discuss the unique structure of credit unions and the enormous benefit that credit unions provide to American consumers in need of financial services.

General Comments

Credit unions are the original consumer financial protectors. Because of our not-for-profit, member-owned cooperative structure, credit unions are not subject to the same profit-first motives that have become characteristic of for-profit financial services providers. This distinction, combined a track-record of providing consumer-friendly financial services, is a key reason that rules and regulations should be tailored so that they are not overly burdensome on credit unions.

The evidence that credit unions are the best financial services option for consumers, different from other financial service providers, and worthy of special consideration from regulators is clear. As a recent example, in March 2018, *Consumer Reports* released a survey on financial institution members and consumers. For the survey, over 72,000 *Consumer Reports* members were asked to give their impressions of 148 financial institutions, including 69 banks, 70 credit unions, and nine online banks. Based on the data collected, *Consumer Reports* found those with accounts at credit unions were more satisfied than those with accounts at banks stating "[o]verall, our members relied more on credit unions than banks for savings accounts, credit cards issued by the financial institutions, loans, CDs, and mortgages." *Consumer Reports* also highlighted that their survey indicated credit unions generally charge lower interest rates on loans. This high level of consumer satisfaction with credit union services has resulted in relatively few complaints concerning credit unions filed with the Bureau. For example, in the case of small dollar lending, credit unions accounted for 0.088% of payday lending complaints and 0.0006% of total complaints filed with the Bureau's consumer complaint database in the three years preceding October 2016. Meanwhile, in November 2018, CUNA analysis into gender representation at financial institutions revealed more than half (52 percent) of credit union CEOs are female, compared with only five percent of commercial bank and six percent of Fortune 500 CEOs. These three data points coupled with countless other studies, surveys, and reports on a wide range of topics provide concrete examples of the many diverse ways credit unions consistently set themselves apart from other actors in the financial services market.

Unfortunately, the Bureau, in its first several years of existence, missed many opportunities to leverage credit unions' mission and history to the benefit of consumers, and finalized regulations that ultimately harmed credit unions and their members. Consumers lose when one-size-fits-all rules force credit unions to pull back safe and affordable options from the market, pushing consumers into the arms of entities engaged in the very activity the rules were designed to

curtail. Under your leadership, the Bureau has an opportunity once again to examine and, where necessary, modify its approach to regulation in a manner that ensures it's fulfilling its consumer protection mission without impeding the availability of safe and affordable financial products and services.

In that spirit, CUNA would like to take this opportunity to highlight for your convenience some key consumer protection priorities for credit unions and extend an offer to provide any necessary feedback, data and expertise that would assist you in leading the Bureau into the future.

Regulatory Approach

CUNA strongly urges the Bureau to closely monitor the impact that its rules have had on credit unions and their members and to appropriately tailor regulations to reduce burden or exempt credit unions entirely, as appropriate. The Bureau's rulemakings and supervisory efforts should be focused on Wall Street banks and the unregulated and under-regulated sectors of the financial services industry. If the Bureau spent fewer resources on regulating and supervising credit unions, then it could spend more time on entities actively engaged in predatory practices that exploit consumers.

Credit unions, as a byproduct of their structure, history, and mission, are unlike any other actor in the financial services space and are best positioned to succeed when supervised and examined by a regulator especially familiar with our unique characteristics. For that reason, the Bureau should aim to work more closely with the National Credit Union Administration (NCUA) in the rulemaking process and use the statutory authority granted to the Bureau to transfer supervision of the largest credit unions back to NCUA.

Throughout its history, the Bureau has invited feedback from stakeholders on its rulemakings but there has been little evidence in final rules that the Bureau heard and took into consideration the concerns of credit unions. While the Bureau's historical indifference to feedback changed for the better under Acting Director Mulvaney, credit unions are hopeful that you will continue this positive trend of stakeholder engagement and participation in the regulatory process, including preserving the Credit Union Advisory Council, using the Request for Information (RFI) and Advance Notice of Proposed Rulemaking (ANPR) processes to solicit additional stakeholder views, and working with the Small Business Administration (SBA) to ensure that the Small Business Regulatory Enforcement Fairness Act (SBREFA) process is efficient and effective.

Statutory Exemption Authority

For the past several years, there has been a cycle of using regulations to curb the abusive practices of too-big-to-fail institutions. Unfortunately, these regulations have been applied indiscriminately to all financial institutions, including credit unions, which have not engaged in irresponsible lending and banking practices, in a one-size-fits-all manner. Unwieldy regulations often lead to excessive regulatory compliance burden for community-based financial institutions, such as credit unions, which can then lead to their exit from certain markets or product offerings. Subsequently, if there is greater centralization in the marketplace, there is a greater chance that large financial institutions will become even larger and thereby, even more likely to become too-big-to-fail.

In the wake of the financial crises, Congress contemplated the need for exemptions to certain rules and crafted the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to authorize the Bureau to tailor its rules so those acting responsibly in the financial services marketplace are not unnecessarily hampered by those rules. Congress deliberately provided this authority expressly in Section 1022 of the Dodd-Frank Act:

*The Bureau, by rule, may conditionally or unconditionally exempt **any class of covered persons**, service providers or consumer financial products or services from any provision of this title, or from any rule issued under this title*
¹(Emphasis added.)

These words are unambiguous, and Congress very clearly conveyed to the Bureau the authority to exempt any class of covered entities from its rules. CUNA has strongly urged the Bureau to use this authority to help protect credit union members from the many problems associated with creating one-size-fits-all rules that are inappropriate for the different not-for-profit structure of credit unions. Credit unions and credit union service organizations (CUSOs) should receive appropriate exemptions from the Bureau's regulatory requirements. However, it is critically important for the Bureau to understand that credit unions are not asking to be exempt from all its rules; instead, we ask the Bureau to consider how credit unions are vastly different from other financial service providers, particularly those who have a history of abusing consumers, and to tailor certain rules accordingly.

Pending & Future Rulemakings

CUNA encourages the Bureau to regularly review its current regulations to streamline requirements, eliminate outdated or superfluous requirements, and provide exemptions for certain actors, such as credit unions and CUSOs, where appropriate.

Considering the Bureau's stated rulemaking agenda for 2019 and beyond, CUNA has several recommendations that should be incorporated into these rules to ensure credit unions can effectively serve their members.

Debt Collection

Debt collection is critical to the survival of all financial institutions. As not-for-profit financial cooperatives, credit unions treat their members-owners with respect throughout the debt collection process and they comply with relevant consumer protection regulations for first-party debt collectors. As a result, consumer complaints regarding credit unions and their debt collection practices are very low compared to other lenders.

For a variety of reasons, credit unions and other lenders may engage third party companies to assist in debt collection efforts. As the Bureau proceeds with rulemaking related to debt collection, CUNA respectfully requests the focus remain strictly on the practices of third-party debt collectors, which have been the subject of more frequent consumer complaints. The Bureau's rulemaking in this area should be reasonable and tailored to mitigate any potential indirect impacts on credit unions and other lenders. In addition, any rule should seek to clarify the application of the Fair Debt Collection Practices Act (FDCPA) requirements to modern collection practices.

Short-term Small Dollar Lending

Credit unions often provide the safest and most affordable loan options for consumers in need of emergency credit. The Bureau's rules governing short-term, small dollar lending should be meaningfully tailored to address predatory practices in the small dollar, short-term lending space. However, any rule targeted toward payday lending should be crafted so not to inhibit credit unions from participating in the emergency credit market by offering reasonable products to members in need. CUNA supports the Bureau revising its current payday rule to allow more credit unions to enter the short-term, small dollar lending space. Such revisions would include creating an express, broader exemption for credit union loan products and working with the NCUA as the agency develops additional small dollar loan programs to coincide with the Payday Alternative Loan (PAL) program, which currently benefits from a partial carve-out from the Bureau's rule.

Remittances

While CUNA supports appropriate safeguards for consumers initiating remittance transfers, including clear and understandable disclosures, the Bureau should propose and finalize substantive amendments to the Remittance Rule to better balance necessary consumer protections with a more tailored regulation that allows consumers access to desired products and services. In this instance, the Bureau should address as soon as possible, three key revisions in the current Rule:

1. Raise the safe harbor threshold from 100 to 1,000 remittance transfers in both the prior and the current calendar years;
2. Eliminate or allow a consumer to opt out of the 30-minute cancellation requirement;
3. Urge Congress make permanent the fee estimates safe harbor.

Historically, remittances have been a significant and, depending on a credit unions' field-of-membership, popular service offered to members. CUNA believe the remittance rule as it currently stands has made it increasingly difficult for the nation's credit union members to obtain a service that is so important to the financial well-being of so many.

Home Mortgage Disclosure Act (HMDA)

The Bureau has consistently acknowledged that credit unions maintained sound credit practices through the economic crises and did not engage in the practices that led to the crash of the housing market. Nevertheless, the HMDA rule has disproportionately burdened credit unions, due to their finite resources, despite no evidence of past wrongful conduct. This particularly makes little sense given credit unions' field of membership requirements.

Although recent developments have provided HMDA relief to small institutions, including the increase to the reporting thresholds and the S. 2155 partial exemption, the Bureau should consider additional amendments to the 2015 HMDA final rule that would provide meaningful exemptions to credit unions. To that end, CUNA suggests the following modifications to the HMDA rule:

1. Allow reporting for Home Equity Lines of Credit (HELOCs) to once again be voluntary. HELOC reporting had always been voluntary under prior rules as these loans are distinct from first lien mortgages.
2. Reduce the data set for all credit unions to data points specifically enumerated in the Dodd-Frank Act. The statutorily enumerated data points are sufficient for purposes of identifying discriminatory practices and implementing the purpose of HMDA.
3. Increase the mortgage thresholds to exempt as many credit unions as possible from HMDA reporting, particularly considering the fact credit unions may only lend within their fields of membership.
4. Clarify which fields the Bureau currently plans to make public and solicit additional comment on the use of a privacy "balancing test."

Unfair, Deceptive, or Abusive Acts or Practices (UDAAP)

In the past, the Bureau was known to engage in the practice of "regulation by enforcement," especially regarding its UDAAP authority. Instead of proposing clear regulations pursuant to an appropriate Administrative Procedure Act (APA) process, the Bureau would use its enforcement authority against financial institutions and expect the subsequent consent order to serve as a means for others to determine what acts and practices it interprets to be in violation of the law. Under the leadership of Acting Director Mulvaney, this controversial practice ended as the Bureau announced an intent to consider a potential UDAAP rulemaking soon. CUNA supports this rulemaking effort as we have previously called on the Bureau to clarify its overly-subjective approach to UDAAP through a rule or other method.

Regarding the issue of UDAAP, CUNA recommends the Bureau consider the following actions:

1. Solicit feedback on whether to eliminate or clarify the overly-subjective "abusive" prong of UDAAP. It should also seek feedback on whether any other aspects of its UDAAP authority should be changed.
2. Clarify that previous enforcement actions or consent orders that conflict with statutory or judicial precedent create no new expectations for compliance. This would help provide more transparency and due process to credit unions and consumers.
3. Clarify and reaffirm the Bureau's narrow authority under the Dodd-Frank Act in regulating the business of insurance—particularly as it applies to credit unions and banks selling insurance—and that UDAAP is not a backdoor to regulate insurance activities.

Ability-to-Repay/Qualified Mortgage

The Bureau is slated to complete and issue in early 2019 its statutorily-required assessment report on the impact of the 2013 Ability-to-Repay and Qualified Mortgage Rule (ATR/QM rule). In previous comments, CUNA has applauded the Bureau's thorough process and willingness to accept constructive feedback on the ATR/QM rule. Credit unions look forward to providing substantive feedback on necessary modifications to the ATR/QM rule in the wake of the report, including on the appropriateness of the 43% debt to income ratio, defining "residual income," the future of the QM GSE "patch," and possible amendments to Appendix Q. As the Bureau considers potential revisions to the rule, CUNA recommends the Bureau engage in a meaningful and prolonged feedback process to ensure any amendments do not create new overly burdensome requirements on credit unions and community financial institutions.

Small Business Data Collection


The Dodd-Frank Act amended the Equal Credit Opportunity Act (ECOA) to require financial institutions to compile, maintain, and submit to the Bureau certain data on credit applications by women-owned, minority-owned, and small businesses. This is one of the last remaining required rulemakings in the Dodd-Frank Act.

Credit unions' unique and distinct memberships, a consequence of legally-restricted fields of membership, would not correspond with the Bureau's plans for data collection and would likely result in data that does not portray a complete or accurate picture of credit union lending. CUNA recommends any rule issued under this authority expressly exclude credit unions from reporting requirements. The regulatory burden likely to be associated with this rule, particularly for smaller credit unions, could harm the ability of small business owners to obtain credit from their credit union.

Conclusion

On behalf of America's credit unions and their 110 million members, congratulations on your confirmation and we look forward to working with you to ensure consumers are protected from bad actors in the consumer financial services market.

Sincerely,



Jim Nussle
President & CEO