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

Dear Director Kraninger:

On behalf of the Credit Union National Association (CUNA), I am writing to urge you to exercise the Consumer Financial Protection Bureau's (Bureau) authority to delegate supervision of credit unions over \$10 billion in assets to the National Credit Union Administration (NCUA). CUNA represents America's credit unions and their 115 million members.

General Comments

Section 1025 of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act (the Dodd-Frank Act) conveys supervision and enforcement authority with respect to consumer financial protection laws for credit unions with assets greater \$10 billion to the Bureau.¹ At the end of 2018, only nine of the nearly 5,500 credit unions had assets greater than the \$10 billion threshold and were therefore subject to Bureau's examination and enforcement authority. For the reasons stated herein, we argue that not only does the Bureau have the authority to delegate the supervisory responsibilities for credit unions with more than \$10 billion in assets to the NCUA, but it should do so based on credit unions' deep history of consumer protection, the support this action has received from NCUA, the protections in the Dodd-Frank Act that preserve the Bureau's authority, and the opportunity this action presents to apply these supervisory resources to other critical Bureau priorities.

The Bureau Has the Authority to Delegate Supervision of Credit Unions with More than \$10 billion in assets to the NCUA

The Bureau can delegate its examination and enforcement over the nine largest credit unions to the NCUA by exempting these credit unions from section 1025 of the Dodd-Frank Act using authority Congress granted the Bureau under section 1022(b)(3)(A). This provision states that the Bureau:

[M]ay conditionally or unconditionally exempt any class of covered persons . . . from any provision of this title, or from any rule issued under this title, as the Bureau determines necessary or appropriate to carry out the purposes and objectives of this title, taking into consideration the [following] factors [as appropriate]: (i) the total assets of the class of covered persons; (ii) the volume

¹ 12 U.S.C. § 1551

of transactions involving consumer financial products or services in which the class of covered persons engages; and (iii) existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections.²

The statutory language is unambiguous: The Bureau has the authority to *conditionally or unconditionally* exempt *any class of covered person*—including credit unions—from *any provision* of Title X of the Dodd-Frank Act—including the provisions related to Bureau-conducted examinations. The exemption of credit unions with over \$10 billion in assets from Bureau-conducted consumer financial protection examinations could be conditioned upon the NCUA conducting those examinations, in practical effect this would be a delegation of authority.

In addition, the section goes on to state this authority may be executed after—as appropriate—the Bureau considers the three enumerated statutory factors. Taking these factors into consideration reinforces the Bureau’s ability to use this authority to delegate supervision of credit unions with more than \$10 billion in assets to the NCUA. With respect to the first factor, credit unions’ total combined assets are far fewer than the total combined assets of banks—and even some individual banks—as well as other financial institutions subject to the Bureau’s authority. While the credit unions with more than \$10 billion in total assets are large credit unions, they all are small financial institutions. Similarly, with respect to the second factor, while the transaction volumes of the largest credit unions may be greater relative to other credit unions, the transaction volumes are far fewer than comparable banks. And, with respect to the third, the Bureau would not completely cede control over credit unions with this delegation, as the Bureau would still retain rulemaking authority over consumer protection regulations that impact all credit unions, and the Bureau also could participate in examination and enforcement decisions should it determine such involvement necessary.

The Bureau Should Transfer Examination and Enforcement Authority of the Largest Credit Unions to the NCUA

Without question, the Bureau could use its authority under section 1022 to delegate supervisory authority of the credit unions with more than \$10 billion in assets to NCUA. Here is why the Bureau should do this:

Credit Unions’ Structure and Mission Are Unique in the Financial Services Sector and Provide Credit Union Members with Extraordinary Protections and Benefits Not Enjoyed by Users of Other Providers

As not-for-profit financial cooperatives dedicated to promoting thrift and providing access to credit for provident purposes to their members, credit unions have a structure and statutory mission that make them unique in the financial services sector and afford consumers with substantial protections they do not enjoy when using other providers. Credit unions’ structure and mission provides them fundamentally different operating motives compared to for-profit banks and nonbank providers which result in credit unions putting their member-owners first. Predicated on a one-member, one-vote franchise, the member-owner relationship that credit

² 12 U.S.C. § 5512(b)(3).

union members have with their credit union ensures that the credit union is operated by its members, for its members; in contrast, users of for-profit institutions have no control over the decisions the institution makes. There is no question that an institution operates in the best interest of those who control it; for credit unions, the control rests in the hands of the member-owners. We encourage the Bureau to recognize that the credit union structure and mission affords consumers extraordinary consumer protections that no other provider offers.

Credit unions' "people helping people" approach has resulted in credit unions' long and deep history of providing their members with safe and affordable financial services. A substantial body of evidence exists to suggest that credit unions are not engaged in the abusive activity that the Bureau was designed to mitigate.

Data from the Bureau's Consumer Complaint Database clearly shows how differently credit unions treat their members compared to other providers. At the highest level, each of the five largest banks has been the subject of more consumer complaints individually than the entire credit union industry. Overall, credit unions have been subject to 8,336 complaints since the Bureau began accepting consumers complaints. This represents 0.66% of all complaints submitted to the Bureau.

Analysis of data published by NCUA and banking regulators suggests that credit unions provide significant economic benefit to the consumers they serve.³ In recent years, credit union members have benefited by as much as \$12 billion because credit unions offer lending products at lower interest rates, saving products with higher rates of return, and other services with lower fees. In addition, the presence of credit unions in the marketplace has benefited consumers of other providers' services an additional \$4 billion.

If the data from the Bureau and other regulators is insufficient to demonstrate just how well credit unions treat their members, consider what consumers say. In 2018, *Consumer Reports* reported that credit unions are among the highest rated services that they had ever rated, with 96% of members highly satisfied.⁴

Despite this record, credit unions have been subjected to one-size-fits-all regulatory requirements that have driven the cost of compliance to more than \$6 billion annually. To make matters worse, compliance costs for credit unions are growing more than three times the rate on inflation. Much of these costs are to comply with regulations designed to mitigate abuses and activity that credit unions have not perpetrated.

Given the dearth of consumer complaints regarding credit unions, the substantial economic benefit they provide consumers, the extraordinarily high level of satisfaction consumers have toward credit unions and the substantial and rapidly growing cost of compliance with one-size-fits-all regulation for credit unions, the Bureau should delegate its supervisory authority over credit unions to the NCUA to allow this function to be conducted in conjunction with credit unions' safety and soundness examinations, thereby reducing regulatory burden for these credit unions without sacrificing important consumer protection.

³ Credit Union National Association. Membership Benefit Report. Year End 2018. Available at: https://www.cuna.org/uploadedFiles/Global/About_Credit_Unions/National-MemberBenefitsD18.pdf

⁴ Consumer Report. "Best and Worst Banks According to Consumer Reports Members." Mar. 24, 2018. Available at: <https://www.consumerreports.org/banks/best-and-worst-banks-and-credit-unions/>

NCUA Has Encouraged the Bureau to Take This Action

In July 2017, then-NCUA Chairman McWatters wrote to then-Bureau Director Cordray requesting that Federally-insured credit unions (FICUs) be exempt from the examination and enforcement provisions of section 1025 of the Dodd-Frank Act.

In his letter, McWatters stated⁵:

As not-for-profit, consumer-owned and -controlled financial institutions, FICUs serve a unique, positive role for consumers in today's financial services marketplace. . . . That role can and should be distinguished from the role played by for-profit, investor-owned and -controlled financial institutions. Subjecting FICUs and their consumer/member owners to the dual examination—and, in the case of federal insured, state-chartered credit unions, triple examination—regime mandated under section 1025 of the CFPA imposes unnecessarily burdensome costs on FICUs, particularly given their positive, consumer-focused role.

CUNA strongly supported the NCUA's position and urged the Bureau to accept and implement the request. Although the Bureau chose to decline the NCUA's request at the time, stating a lack of authority to execute the requested action, CUNA urges the Bureau to reevaluate its position on this question as part of any continuous review of the Bureau's statutory authority. CUNA believes the delegation of the Bureau's examination authority to NCUA using the Bureau's exemption authority is the best option for both credit unions and the members they serve.

Delegation of Authority Is Not Abdication of Authority

If the Bureau delegates examination and enforcement authority over credit unions with over \$10 billion in assets to the NCUA, the NCUA would still consult with the Bureau to ensure its mission is being effectively pursued. As highlighted in the then-Chairman's letter, the NCUA has its own Office of Consumer Financial Protection that regularly coordinates and works with the Bureau as well as the Office of National Examination and Supervision which specializes in examining credit unions with over \$10 billion in assets. In addition, both agencies are members of the Federal Financial Institutions Examination Council (FFIEC), which is tasked with promoting consistency in the supervision of financial institutions and encouraging uniform examination standards among its member agencies. This interagency coordination provides the mechanism for communication about financial institution practices and would allow the Bureau to provide consistent feedback on the examination and enforcement of consumer protection regulations for the largest credit unions.

Further, if the Bureau determined there were practices in the financial services marketplace that warranted further regulation and government oversight, it could always address these practices through regulations for financial institutions. Since its creation, the Bureau has

⁵ Letter from NCUA Chairman McWatters to then-Bureau Director Cordray, July 6, 2017 Available at: <https://www.ncua.gov/files/press-releases-news/mcwatters-letter-to-CFPB-credit-union-examination-enforcement.pdf>

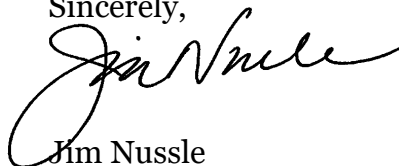
imposed many new regulatory requirements through the rulemaking process. It would be expected that the Bureau would continue to monitor practices in the industry and impose reasonable regulatory requirements as needed. The protection of consumers from bad actors in the market would not change if NCUA—not the Bureau—conducted routine exemptions for compliance with consumer protection regulations for credit unions with over \$10 billion in assets.

Conclusion

We believe credit unions are best positioned to succeed when supervised and examined by a regulator particularly familiar with their unique characteristics, and there is no regulator more familiar with credit unions than NCUA. If NCUA was delegated the authority to conduct consumer protection examinations for credit unions with over \$10 billion in assets, then not only would the affected credit unions benefit from reduced duplication and burden in examinations, but the Bureau could reduce its costs or apply the resources it would have used for credit union supervision to other priorities.

On behalf of America's credit unions and their 115 million members, we urge you to delegate supervision of credit unions over \$10 billion in assets to the National Credit Union Administration, and we look forward to continuing to work with you to ensure consumers are protected from bad actors in the consumer financial services market.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Nussle". The signature is fluid and cursive, with a large initial "J" and "N".

Jim Nussle
President & CEO