

# The Compendium of CUNA Policies on Legislative and Regulatory Issues

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# **Credit Union National Association Commitment to Advocacy**

## **Credit Unions' Advocacy Commitment**

Credit unions are not-for-profit financial cooperatives, established to promote thrift and provide access to credit to members for provident purposes. Because credit unions have been chartered for this purpose by Congress or one of the states and in the spirit of cooperative principles, every consumer and small business should have access to financial services from one or more credit union. Credit unions pledge themselves to the preservation, protection and prosperity of this system of cooperative credit, its mission of service to members and communities and its uniqueness.

Each credit union has the right of self-determination with respect to the services it provides its members and the manner in which those services are delivered. This autonomy, derived from the member-owned and democratically-controlled characteristics of credit unions, should be balanced only by reasonable regulation that seeks to sustain the cooperatively-funded insurance funds that protects member deposits. The cooperative ownership structure requires each credit union to balance the individual needs of its members with the collective interests of its members; this structure ensures that the members of credit unions are well-served, and protected against widespread abuses when they do business with their credit union.

To ensure not only the survival but also the growth of credit unions as a viable alternative to for-profit financial services providers, credit union enabling legislation must perpetually evolve. In coordination with the Credit Union National Association (CUNA) and the state leagues, credit union members, volunteers, and employees must exercise the inherent responsibility to advocate in support of the advancement of credit unions before policymakers at all levels of government.

## **CUNA's Advocacy Commitment**

CUNA will vigorously defend the defining characteristics of credit unions: member-owned, democratically controlled, not-for-profit financial cooperatives, led generally by volunteers and chartered by either the Federal government or a state government. CUNA will defend the cooperative business model. CUNA will urge government leaders to refrain from actions that lessen the autonomy, independence and effectiveness of credit unions as unique financial cooperatives.

In support of the responsibility to advocate and affirming the commitment to preserve credit unions and help them prosper, CUNA will continue to develop its world-class advocacy program to lead the credit union system in the defense and the advancement of the interests of credit unions before policymakers at all levels of government and the public. Because credit unions specialize in providing credit and savings services to their members, CUNA will continue to primarily focus its advocacy efforts on financial services and payment systems issues.

CUNA bases its representation of credit unions on the following six guiding principles to maintain credit unions as unique institutions:

- Credit unions must have equal access to the financial marketplace so that credit unions can offer their membership the financial services they need and want.
- Credit unions must retain their federal and state income tax-exempt status.

- Credit unions must be supervised by an independent federal agency or by a viable state regulator, in order to foster and preserve a regulatory environment that recognizes credit unions as unique financial service providers.
- Credit unions must defend the opportunity to choose between chartering alternatives within the credit union system based on the best interests of their members, recognizing the state and federal credit union charters currently provide the best vehicle for serving the financial needs of consumers.
- Credit unions members must continue to receive cooperatively funded share insurance, administered either by an independent agency of the federal government or by an adequately diversified private corporation.
- Credit unions must have the ability to create, without unreasonable government interference, the cooperative support systems necessary to serve credit union members effectively and efficiently. Such systems include service organizations, trade associations, financial intermediaries, and correspondent arrangements.

CUNA is committed to taking all actions necessary and appropriate to combat attacks at the state and federal levels to alter the income tax status of credit unions, to eliminate an independent regulator, to limit regulatory interpretations of statutory authority on fields of membership, to prevent credit unions from offering their members modern products and services, or to otherwise undermine the relevancy and vitality of credit unions.

In recognition of the fact that credit unions are among the most heavily regulated financial entities in our economy today, CUNA will press Congress, the National Credit Union Administration, the Bureau of Consumer Financial Protection, the Federal Financial Institutions Examination Council, the Department of the Treasury, the Board of Governors of the Federal Reserve System, state credit union regulators, other regulators and quasi-regulators such as the Financial Accounting Standards Board to consider how the significant regulatory burden under which credit unions operate can be alleviated and to pursue with policymakers initiatives to minimize the regulatory burden credit unions face.

Further, CUNA will actively and aggressively seek public policy that advances the credit union charter and the operating environment for credit unions generally, encouraging policymakers to relax restrictions on credit union service and enhance the ability of credit unions to meet the evolving financial services needs of their members.

The policy statements included within this Compendium, having been approved by the Board of Directors of the Credit Union National Association, serve as the authority and direction for the Association to act in the best interest of credit unions and their members.

# Bank Secrecy Act Compliance

**Position** (*adopted December 2014, updated December 2018*): While CUNA supports the objectives of laws and regulations to track money laundering and terrorist financing, it is important to strike the right balance between the costs to financial institutions and the benefits to the federal government and law enforcement of the Bank Secrecy Act (BSA), anti-money laundering (AML), and OFAC regulations. CUNA supports legislative and regulatory changes to address the redundancies, unnecessary burdens, and opportunities for efficiencies within the BSA/AML statutory and regulatory framework, including:

- Minimize the duplication of the same or similar information;
- Provide additional flexibility based on the reporting institution type or level of transactions;
- Curtail the continually enhanced due diligence requirements;
- Increase the currency transaction report (CTR) threshold; and
- Reduce the reporting of SARs and CTRs that have limited usefulness to law enforcement.

## Subcommittee: Examination and Supervision

# Bankruptcy

**Position** (*adopted February 2009; updated December 2014, reviewed 2018*): CUNA recognizes that bankruptcy is a legitimate process for many who truly need an extraordinary means to address their indebtedness. However, the Bankruptcy Code must fairly balance the rights of both credit grantors and consumers and recognize the impact that bankruptcy has on the cost of credit to consumer/borrowers who repay their obligations.

## Judges Authority to Modify Mortgage Loans

CUNA opposes any amendment to the Code that would give bankruptcy judges broad authority to modify any type of loan secured by a debtor's principal residence. A lender that made a mortgage loan using good underwriting standards should not bear the risk of a decline in the house's value. Adopting such a broad amendment would result in a flood of bankruptcy filings by people who would not otherwise seek bankruptcy relief, put additional stress on lenders, further undermine investments in mortgage-backed securities, increase cost of credit for future borrowers, and present additional challenges in rebuilding the secondary mortgage markets.

However, CUNA supports an amendment to the Code to give bankruptcy judges authority to amend certain mortgage loan agreements secured by the debtor's principal residence, specifically: Loans that are determined to be "subprime" loans with large resets of interest rates; loans with negative amortization; or loans that a judge reasonably determines were fraudulent or abusive when made with no reasonable underwriting standards and expectation the borrower could actually repay the loan.

With any loan falling within this category, the bankruptcy judge should have the authority, as appropriate, to cancel prepayment penalties, to lower the interest rate to the current conventional market rate, to extend the maturity of the loan, and to adjust the principal balance to no lower than the current market value of the house (making the rest of the principal due unsecured); the debtor would have to demonstrate the ability to make the monthly payments under the new terms. The debtor would be prohibited from using the

house as collateral for any future loans, and when the house is sold by the debtor, the debtor would not only have to repay the remaining loan balance established by the plan, but also turn over to the original first and junior lien holders any net proceeds up to the original mortgage balances.

CUNA believes that the mortgage market in the future will be quite different and that bankruptcy judges will not continue to see the types of mortgages where debtors should reasonably be granted some form of relief in Chapter 13 cases.

Because of the continuing impact of the "Great Recession," CUNA supports a temporary exception to the federal discharge-of-indebtedness income tax law to provide tax relief to homeowners who negotiate a loan modification on their principal residence. Such relief may help people avoid having to file for bankruptcy.

## **The treatment of Student Loans in Bankruptcy**

CUNA supports equal treatment in bankruptcy of student loans provided by the public and private sectors.

**Subcommittee: Consumer Protection**

## **Capital and Prompt Corrective Action**

**Position** (*adopted 2001, updated December 2014, reviewed 2018*), and undergo regular, robust examinations for compliance with fair lending regulations: CUNA supports reform of prompt corrective action (PCA) that would, while taking into account the unique cooperative structure of credit unions, result in a system that has (a) leverage ratio requirements that are comparable to those in place for other federally insured depository institutions, and (b) risk-based capital standards that appropriately account for credit risk.

CUNA supports the authority of credit unions to build additional capital, either from members or nonmembers, in a way that does not dilute the cooperative ownership and governance structure of credit unions. This additional capital should be subordinated to credit unions' share insurance funds, so that credit unions have the financial base to offer member services and adjust to fluctuating economic conditions. CUNA also supports state laws enabling credit unions to use such additional capital when federal law is changed to permit this authority.

**Subcommittee: Credit Union Powers, Examination and Supervision**

## **Community Development and Low Income Credit Unions**

**Position** (*adopted June 2005, updated December 2014, reviewed 2018*): CUNA supports the development and preservation of community development credit unions, and urges NCUA to make a continuing, special effort to support CDCUs, such as supporting their efforts to hold non-member accounts.

CUNA also supports the low-income credit union designation and urges NCUA and state regulators to encourage credit unions to seek this designation. CUNA also urges NCUA to exercise its statutory authority to the fullest extent possible in defining "credit unions serving predominantly low-income members."

**Subcommittee: Credit Union Powers**

# Congressional Hearings and Studies

**Position** (*adopted 1995, updated December 2014, reviewed 2018*): When matters impacting credit unions' operations are subject of Congressional hearings, CUNA expects to have the opportunity to testify on behalf of the credit unions system. If competitors are permitted to testify on matters specific to credit unions, then CUNA expects credit unions to have an equal opportunity to testify at Congressional hearings on matters specific to credit union competitors.

CUNA expects any congressionally mandated studies of the credit union movement to be fair and objective, and if competitors are permitted to comment on studies involving credit unions, then CUNA expects credit unions to have an equal opportunity to comment on federally sponsored studies about credit union competitors.

## Advocacy Committee

# Consolidation of Financial Institutions Regulatory Agencies and Federal Insurance Funds

**Position** (*adopted 1990, updated December 2018*): Because of the unique nature of credit unions, CUNA strongly opposes the merger of the regulatory and supervisory, or insurance functions of NCUA or the NCUSIF with any other federal financial regulatory or insurance agency.

## Subcommittee: Examination and Supervision

# Consumer Financial Protection Bureau

**Position** (*adopted December 2014, reviewed 2018*): It is appropriate for the CFPB to focus on regulating products and practices that are, in fact, abusive to members/customers, particularly those of entities that have not been sufficiently regulated. Credit unions serve their members well and as member-owned cooperatives that are already significantly regulated, including for consumer protection, they do not need new rules to protect their members.

Thus, CUNA opposes regulatory and data collection requirements imposed on credit unions that are unwarranted, overly burdensome, do not recognize the difference between credit unions and large banks, detract from member service, stifle innovation, or not specifically directed by Congress. CUNA also opposes CFPB consumer complaint procedures that result in publishing of unsubstantiated charges and/or portray credit unions in a false light. CUNA further opposes the establishment of policies through the issuance of directives or enforcement actions as opposed to the rulemaking process that permits notice and comments on proposed changes.

CUNA supports the full use of the agency's exemption authority for credit unions to minimize regulatory requirements on them. CUNA encourages the CFPB to review its rules regularly to remove outdated, unnecessary and overly burdensome regulations. CUNA also supports raising the threshold level for CFPB examination authority or revising it so that no credit union would be subject to CFPB examinations.

CUNA supports statutory and regulatory changes in CFPB governance to maximize the Bureau's openness and accessibility, such as by replacing the office of a single

director with a multi-member board. Further, CUNA encourages Congress to exercise thorough oversight of the Bureau, and supports funding of the Bureau through the appropriations process to enhance Congressional oversight opportunities.

#### **Subcommittee: Consumer Protection**

## **Conversion to a Mutual Thrift/Bank Charter**

**Position** (*adopted December 2014, reviewed 2018*): The credit union charter provides the best vehicle for serving the financial needs of consumers. CUNA supports the right of credit union member/owners to exercise democratic control of their credit unions.

The leadership of credit unions considering conversions have a fiduciary responsibility to educate the membership of their credit union fully and objectively on the consequences of the conversion and reasonable business alternatives, including merger or liquidation. Full, plain language, disclosures are essential to furthering the democratic process and ensuring that the decision the membership makes regarding conversion is in the best interest of the membership.

The net worth of the credit union belongs to its members and should remain with them. There should be no “unjust enrichment” to directors and senior management if a credit unions’ later converts to a bank and CUNA supports regulatory efforts to monitor and address this issue.

CUNA has a responsibility to protect and advance credit unions, the credit union charter and the cooperative structure of the credit union movement. That is why CUNA continues to support and advocate the strongest possible federal and state charter enhancements for credit unions.

CUNA will work with and encourage NCUA and state regulators to help ensure credit unions board members comply fully with legal and fiduciary duties to inform their members about potential conversions, including the disposition of net worth.

#### **Subcommittee: Credit Union Powers**

## **Corporate Credit Unions**

**Position** (*adopted December 2014, reviewed 2018*): CUNA supports the ability of corporate credit unions to operate without undue interference from regulatory agencies, barring material safety and soundness issues.

#### **Subcommittee: Examination and Supervision**

## **Credit Union Representation**

**Position** (*adopted June 2005, updated December 2008, reviewed 2018*): CUNA seeks credit union representation on all appropriate federal and state boards, commissions and committees whose missions affect credit unions.

#### **Advocacy Committee**

## **Data Collection on Service to Credit Union Members**

**Position** (*adopted 2000, updated December 2018*): CUNA opposes legislative or regulatory efforts to subject credit unions to Community Reinvestment Act-type

requirements. Credit unions can only lend to their membership, which is the source of their deposits, and undergo regular, robust examinations for compliance with fair lending regulations; therefore, credit unions, by their very nature, comply with the “spirit” of the Community Reinvestment Act.

CUNA recognizes the importance of data to demonstrate the approximate income levels of credit union members and supports the reasonable collection of appropriate data through the examination process. Such data collection efforts must be well-tailored to:

- Recognize the history of credit unions’ field of membership limitations;
- Minimize credit unions’ regulatory burdens;
- Represent credit unions’ unique role as cooperative financial institutions;
- Allow accurate comparisons with other financial institutions;
- Protect individual credit unions’ information;
- Permit credit unions to have access to their own data collected by the regulator; and
- Reflect the extent to which members utilize the services of their credit unions.

### **Subcommittee: Examination and Supervision, Consumer Protection, Housing**

## **Data Security**

**Position** (*adopted June 2006, updated December 2014, reviewed 2018*): CUNA supports federal legislation to address the significant and growing problems associated with data security breaches that compromise the confidentiality of financial and personal information of credit unions and their members. Specifically, CUNA advocates that:

- Merchants or their agents, such as processors, must be prohibited from storing personal and financial information in connection with credit or debit card transactions unless they need the information to process transactions and encrypt any such information retained;
- When a breach occurs involving a merchant, the company must provide useful and timely notice to financial institutions identifying the source and time of the breach;
- Merchants and their agents whose actions or negligence are responsible for a data breach must reimburse the consumer or financial institution on a timely basis for the cost of any notices and any losses they suffer as a result of a breach;
- Financial institutions must have a safe harbor from liability for misuse of information when the information has been encrypted;
- Federal agencies take all reasonable steps to minimize the amount of sensitive data collected from credit unions and to safeguard such data once it has been provided to the agency to the extent possible;
- Standards regarding data security requirements for the handling of personal and financial information should be uniform and provide adequate consumer protections; and
- Data protection legislation should not impose new regulatory burdens on consumers or financial institutions, which are already subject to the privacy protection requirements of the Gramm-Leach Bliley Act.

- Federal data security law should preempt state law in order to provide a national data security standard.

### **Subcommittee: Payments**

## **Diversity, Inclusion and Respect**

**Position** (*adopted December 2018*): Credit Union National Association supports public policies to ensure that diversity, inclusion, and respect prevail throughout the credit union movement. High organizational and industry performance requires that credit unions uphold inclusive principles and foster respectful environments that embrace diversity in all levels of staffing, leadership, management, governance, advocacy, and business practices.

The purpose of credit unions is to promote the economic well-being of all people through a credit union system which is cooperative, member-owned, volunteer directed, not-for-profit, and therefore tax-exempt; to provide a secure financial alternative for all consumers, and to provide financial and related products and services to all members.

Credit union membership is available to all and credit unions do not discriminate based on gender, color, age, national origin race, sex, gender, religion, disability, sexual orientation, or other factors unrelated to a person's eligibility to join the credit union or their financial qualifications to access credit union services. That same nondiscriminatory ideal also applies to credit union staffing, leadership, management, governance, advocacy, and business practices.

Diversity encompasses all the characteristics, experiences, and cultural influences that make each person unique. The collective sum of the individual differences, life experiences, knowledge, inventiveness, innovation, self-expression, unique capabilities, and talent plays a significant part of credit union culture, reputation, and achievement.

Inclusion fosters communication, cooperation, teamwork and participation, and representation of all groups and perspectives. Initiatives that foster inclusion of those with diverse characteristics make the credit union system stronger and ensure that the voices of all credit union members are represented.

Diverse staff, leaders, management, advocates and service providers, as well as purposeful strides to increase respect and inclusion in those same arenas, will strengthen the credit union movement as a whole.

### **Advocacy Committee**

## **Dual Chartering**

**Position** (*adopted 2001, updated December 2014, reviewed 2018*): CUNA is committed to a viable dual-chartering system and opposes any unnecessary restrictions on conversion from one system of credit union supervision to another system.

CUNA supports the autonomy of state regulators and opposes any threat to the dual chartering system from NCUA regulatory over-reach. CUNA acknowledges the dual-role of NCUA as insurer of credit union shares and regulator of federally chartered credit union; however, actions taken by the NCUA Board on insurance matters should be separate from those taken on regulatory and supervisory matters. CUNA opposes efforts on the part of the NCUA to use its role as insurer to regulate state chartered credit unions on matters under the jurisdiction of a state regulator.

### **Subcommittee: Credit Union Powers**

# Field of Membership

**Position** (*adopted 2001, updated December 2008, reviewed 2018*): CUNA strongly believes that all consumers have the right to improve their financial well-being through the services of not-for-profit financial cooperatives. To that end, credit union boards of directors must have significant flexibility to determine their fields of membership to enhance safety, soundness and service. Every consumer should have access to credit union services through one or more credit unions. Competition among credit unions is beneficial to members, and cooperation among credit unions is essential to extending credit union services to more credit union members and potential members.

CUNA supports an amendment to the Federal Credit Union Act that clarifies that all federal credit unions, regardless of FOM charter type, are permitted to add underserved areas outside of their fields of membership. CUNA supports reasonable clarification of the definition of “underserved” only if any change in the definition is accompanied by “grandfathering” of any underserved area already served by a federal credit union and does not direct credit unions to only serve underserved individuals or communities. CUNA also supports efforts by Congress and credit union regulators to minimize other field of membership restrictions and to permit credit unions greater flexibility to reach out and serve consumers.

**Subcommittee: Credit Union Powers**

## Financial Crimes

**Position** (*adopted 2000, updated December 2014, reviewed 2018*): CUNA supports efforts to address criminal activities impacting financial services and financial institutions as long as those efforts are not overly burdensome and do not curtail legitimate business practices.

CUNA supports laws and regulations to protect consumers from identity theft and credit card fraud, as long as the language is carefully written to allow legitimate lenders, such as credit unions, to operate efficiently and cost effectively.

CUNA supports laws and regulations that protect the ability of credit unions to collect debts from members who have used the proceeds of loans to voluntarily engage in activities that turn out to be illegal.

**Subcommittee: Examination and Supervision**

## Financial Education

**Position** (*adopted December 2014, reviewed 2018*): CUNA will be a strong advocate for government initiatives that help consumers build assets and gain financial understanding. This includes supporting the provisions in the federal bankruptcy law to require counseling and training before a debtor can receive a discharge by the bankruptcy court. It also includes support for “right time” financial education, particularly in special lending programs, whether government-sponsored or privately-funded, which are designed to provide people of modest means access to loans with reasonable terms and conditions.

**Subcommittee: Consumer Protection**

# Housing Finance Reform (Secondary Market)

**Position** (adopted March 2012, updated December 2014, reviewed 2018, updated November 2019): CUNA supports the existence of an efficient, effective, and fair secondary market with equal access for lenders of all sizes.

As policymakers consider comprehensive reforms to the housing finance system, CUNA supports proposals that are consistent with the following principles, and have been subject to full and fair consideration with respect to potential impact on all market participants:

- **Neutral Third Party:** Conduits for mortgage originators to access the secondary market should be neutral third parties. Accordingly, these entities must necessarily be independent of any firm that has any other role or business relationship in the mortgage origination and investment process in order to prevent conflicts of interest or misaligned incentives.
- **Equal access:** The secondary market must be open to lenders of all sizes on an equitable basis. CUNA understands that the users (lenders, borrowers, etc.) of a secondary market will be required to pay for the use of such market through, for example, fees, appropriate risk premiums and other means. However, guarantee fees or other fees/premiums should not have any relationship to lender volume.
- **Strong Oversight and Supervision:** The entities providing secondary market services must be subject to appropriate regulatory and supervisory oversight to ensure safety and soundness, for example by ensuring accountability, effective corporate governance, and preventing future fraud; they should also be subjected to strong capital requirements and have flexibility to operate well and develop new programs in response to marketplace demands.
- **Durability:** The new system must ensure mortgage loans will continue to be made to qualified borrowers even in troubled economic times. Without the backstop of an explicit federally insured or guaranteed component of the revised system, CUNA is concerned that private capital could quickly dry up during difficult economic times, effectively halting mortgage lending altogether.
- **Financial Education:** The new housing finance system should emphasize consumer education and counseling as a means to ensure that borrowers receive appropriate mortgage loans.
- **Predictable and Affordable Payments:** The new system must include consumer access to products that provide for predictable, affordable mortgage payments to qualified borrowers. Traditionally this has been provided through fixed-rate mortgages (such as the 30-year fixed rate mortgage), and it is important that qualified borrowers continue to have access to products that provide for predictable and affordable mortgage payments.
- **Loan Limits:** The new housing finance system should apply a reasonable conforming loan limit that adequately takes into consideration local real estate costs in higher cost areas.
- **Affordable Housing:** The important role of government support for affordable housing (defined as housing for lower income borrowers but not necessarily high risk borrowers, historically provided through FHA programs) should be a function separate from the responsibilities of the secondary market entities. The

requirements for a program to stimulate the supply of credit to lower income borrowers are not the same as those for the more general mortgage market. We believe that a connection between these two goals could be accomplished by either appropriately pricing guarantee fees to minimize the chance of taxpayer expense, and/or adding a small supplement to guarantee fees, the proceeds of which could be used by some other federal agency in a more targeted fashion in furtherance of affordable housing goals.

- **Mortgage Servicing:** If national mortgage servicing standards are developed, such servicing standards should be applied uniformly and not result in the imposition of any additional or new regulatory burdens upon credit unions. Credit unions should continue to be afforded the opportunity to provide mortgage servicing services to their members in a cost-effective and member-service oriented manner, in order to ensure a completely integrated mortgage experience for credit union members/borrowers. To lose this servicing relationship would be detrimental not only to a vast majority of credit union members/borrowers, but could also result in fewer mortgage choices available to credit unions and their members, with higher interest rates and fees being imposed on both.
- **Reasonable and Orderly Transition:** The transition from the current system to any new housing finance system must be reasonable and orderly.

#### **Subcommittee: Housing**

## **International Fund Transfers**

**Position** (*adopted December 2014, updated December 2018*): International fund transfers, including remittances, are important services for consumers, including in underserved communities, and CUNA supports initiatives to increase access to international fund transfer services. International fund transfers include: wire transfers and automated clearing house (ACH) transfers.

CUNA supports principles of fair dealing in international fund transfers for credit unions using international payment systems and additional flexibility in laws and rules, such as from the Consumer Financial Protection Bureau, to facilitate such transfer services at credit unions. Due to the compliance complexities involved in transmitting international fund transfers through “open networks,” sending financial institutions receive limited information with the transfer, including on taxes and fees imposed by entities outside of the sending institution’s control. For “open network” transfers, we support exemptions from onerous requirements and additional flexibility with disclosing estimated or other information that is available to the sending institution.

#### **Subcommittee: Consumer Protection, World Affairs**

## **Investment Authority of Credit Unions**

**Position** (*adopted 1982, updated December 2014, reviewed 2018*): CUNA supports the expansion of credit unions’ investment authority because credit unions must be able to place funds in a wide range of investment alternatives to be competitive in the marketplace. In particular, CUNA supports legislation that would grant NCUA more authority to determine appropriate investments for credit unions. CUNA also supports increasing the percentage that can be invested in credit union service organizations (CUSOs). CUNA opposes government-imposed activity fees on credit unions.

#### **Subcommittee: Credit Union Powers**

# Lending

**Position** (*adopted December 2014, reviewed 2018*): CUNA supports legislation and regulations that give credit unions as much flexibility as prudent in making their own decisions as to the types of loans they will offer to their members, the collateral necessary to secure loans, underwriting criteria, the terms of loans, the incentives offered to employees in connection with the lending process, the collection of loans, and the total amount that will be outstanding for different types of loans, consistent with established policies of the credit union's board of directors.

CUNA supports government and private-sector programs that provide credit union members of modest means access to loans with reasonable terms and conditions. We also support the ability of credit unions to provide indirect lending products.

## **Member Business Loans**

CUNA supports legislation to eliminate the arbitrary cap on member business lending imposed on federally insured credit unions. Short of elimination, CUNA supports legislation to raise the cap to a more reasonable level and to make other changes in law to exclude certain loans from the cap. CUNA also supports the elimination of statutory restrictions that require credit unions experiencing net worth challenges to stop making member business loans. CUNA supports the elimination of all regulatory restrictions on members business lending that are not required by statute. In addition, CUNA encourages credit unions interested in making member business loans to explore Small Business Administration lending programs.

## **Loan Participations**

CUNA supports the authority for credit unions, to invest in loan participations without unreasonable limitations related to how the loans were originated.

## **Fair Lending**

CUNA supports the goals of the Equal Credit Opportunity Act, Fair Housing Act and Home Mortgage Disclosure Act and regulatory initiatives that promote the availability of credit to all creditworthy applicants. However, CUNA expects regulators to weigh the regulatory burden on credit unions with the benefit to consumers when implementing regulations or conducting examinations to carry out fair lending laws.

## **Fair Credit Reporting Act and the Use of Credit Reports**

CUNA supports legislative and regulatory initiatives that promote the Fair Credit Reporting Act's goals of ensuring fair and accurate credit reporting by credit bureaus and data brokers. However, CUNA does not support changes that would impose additional regulatory burdens on credit unions as users and furnishers of information to consumer reporting agencies. Further, CUNA opposes efforts to restrict or prohibit credit unions' use of credit reports during staff recruitment.

## **Truth-in-Lending (TILA) and Other Disclosure Requirements**

CUNA supports consumers always being provided in any credit transaction, both for consumer loans and mortgage loans, clear disclosures of key terms of the lending arrangement and all costs related to the loan. CUNA supports:

- The concept of effective credit cost disclosure under TILA (Regulation Z);
- Pre-emption of onerous state disclosure requirements;
- Recognition by regulators of the compliance burden imposed on creditors when TILA and other disclosure requirements are changed;
- Reduction where appropriate in civil liability penalties when the lender acted in good faith; and
- Appropriate statute of limitation periods and reasonable provisions to allow lenders to correct errors.

Since Truth-in-Lending changes—as well as RESPA (Regulation X) and HMDA (Regulation C) change—can be complex and require credit unions to use new forms, make data processing changes, and provide additional staff training, credit unions must be given an extensive period of time between when the new regulations are adopted and mandatory compliance is required.

### **Payday and Predatory Lending**

One of the goals of the founders of the American credit union movement was to create a system of cooperative finance that provided consumers with access to credit, including short-term, small-dollar loans, on fair terms and rates. Therefore, CUNA supports the ability of credit unions to provide beneficial short-term, small loans as alternatives to predatory payday lending, which has no place in the financial marketplace. CUNA encourages credit unions to report positive payday alternative loan payment histories to credit bureaus.

CUNA condemns predatory lending policies and practices such as: charging rates substantially in excess of costs; rolling over payday loans with high additional fees; granting numerous extensions of such credit over the course of a year without offering counseling or savings programs; making abusive home equity loans; and providing inadequate disclosures. CUNA encourages credit unions to provide members with financial education as a means to ensure that they are not the victims of this type of lending.

**Subcommittee: Credit Union Powers, Consumer Protection, Housing**

## **Liquidity and the Central Liquidity Facility**

**Position** (*adopted December 2014, reviewed 2018*): CUNA supports the existence and mission of the NCUA's Central Liquidity Facility. In principle, CUNA supports and encourages statutory revisions that would modernize the CLF's funding and operations and facilitate the ability of credit unions to borrow from the CLF for short and longer-term needs, consistent with financial institutions' access to the Federal Reserve discount window. The CLF should have an efficient process and credit unions should have some say in the operation of the Facility.

CUNA also supports allowing Federal Home Loan Banks to serve as a source of federal liquidity for credit unions and to allow privately insured credit unions to qualify for membership in, and borrow from, the FHL Bank System.

**Subcommittee: Examination and Supervision**

# Membership Termination by Federal Credit Unions

**Position** (*adopted 1982, reviewed 2018*): CUNA supports an amendment to the Federal Credit Union Act to give federal credit unions the authority to expel members when the board of directors deems there is sufficient reason for expulsion.

**Subcommittee: Credit Union Powers**

## Mergers

**Position** (*adopted June 2005, updated December 2014, reviewed 2018*): CUNA supports regulatory policies that permit credit unions to merge on a voluntary basis as they determine is in their members' best interests.

CUNA supports federal government policy that relieves credit unions from unnecessary requirements under the Hart-Scott-Rodino Act's premerger notification requirements.

**Subcommittee: Credit Union Powers**

## Monetary Reserves

**Position** (*adopted December 2014, reviewed 2018*): CUNA supports legislation to increase or eliminate the cap on the number of automatic transfers which may be made between a members' savings accounts and checking accounts each month.

**Subcommittee: Payments**

## National Credit Union Administration: Authority Over CUSOs and Third Parties

**Position** (*adopted March 2015, updated December 2018, revised December 2019*): The Credit Union National Association recognizes that threats such as cybersecurity breaches and money laundering impact credit unions and the credit union system. Credit unions often rely on Credit Union Service Organizations (CUSOs) and/or third-party vendors to deliver products and services to their members and expect limited exposure to these threats. CUNA understands that there may be instances where the National Credit Union Administration's involvement is warranted for supervising critical CUSOs and vendors that present material risks to the credit union system, but opposes NCUA having unlimited authority to supervise all CUSOs and vendors.

**Subcommittee: Examination and Supervision**

## National Credit Union Administration: Budget

**Position** (*adopted December 2014, updated December 2018*): Because credit union funds generally finance the work of the agency, CUNA opposes routine NCUA budget increases when the agency has not provided sufficient explanation to the credit union system regarding the need for additional costs. Credit unions are entitled to information that will allow them to determine whether NCUA is allocating its resources on an efficient, appropriate and well-balanced basis, consistent with principles of safety and soundness and fairness to both state and federal credit unions.

**Subcommittee: Examination and Supervision**

## **National Credit Union Administration: Claims for Losses**

**Position** (*adopted September 2010, reviewed 2018*): CUNA supports reasonable authority for the National Credit Union Administration Board and state regulators to pursue claims for losses as long as any additional time period to pursue such claims differentiates between outside parties, such as brokers, vendors and consultants, and credit union volunteers or staff.

More specifically, any additional time period beyond prescribed statutory limits for regulators to raise such claims should be limited to outside parties and should not include credit union board members, who are chiefly volunteers, or credit union staff, except for incidents of fraud against the credit union that cause a material loss to the credit union.

**Subcommittee: Examination and Supervision**

## **National Credit Union Administration: Enforcement of Federal Credit Union Bylaws**

**Position** (*adopted December 2014, reviewed 2018*): CUNA recognizes that NCUA has the legal authority to enforce federal credit union bylaws but opposes NCUA's enforcement of bylaws that merely address administrative issues. NCUA should become involved in the enforcement of a federal bylaw only when a bylaw dispute cannot be resolved by the credit union first, using its own internal processes, before turning to NCUA. If NCUA must become involved, its actions should be reasonable and no harsher than actions taken by other regulators when addressing similar issues.

**Subcommittee: Credit Union Powers, Examination and Supervision**

## **National Credit Union Administration: Overhead Transfer Rate**

**Position** (*adopted December 2014, reviewed 2018*): CUNA opposes any overhead transfer of agency expenses to the National Credit Union Share Insurance Fund that are not legitimate, substantiated "insurance-related" costs, consistent with fairness to state and federal credit unions and the Federal Credit Union Act. The NCUA Board should fully communicate its analysis and proposal regarding the overhead transfer rate to the credit union community in a timely manner prior to setting a new overhead transfer rate.

**Subcommittee: Examination and Supervision**

## **National Credit Union Administration: Qualifications and Duties of the Board**

**Position** (*adopted June 2005, updated December 2008, reviewed 2018*): CUNA supports amendments to the Federal Credit Union Act to require at least one member of the NCUA Board to "have tested credit union experience" and to eliminate the restriction in the law that no more than one member of the board can have credit union experience. CUNA also urges that one member of the Board have specific responsibility to work closely with state credit union regulators, which should help

keep the interests of state chartered, federally insured credit unions in mind with the development of regulations, policies and examiner guidance.

#### **Subcommittee: Examination and Supervision**

## **Outreach Programs**

**Position** (*adopted 2001, updated December 2014, reviewed 2018*): CUNA recognizes that the purpose of credit unions is to promote the economic well-being of all people, including those of modest means. CUNA encourages credit unions to provide low-fee services to help serve as a meaningful financial alternative to those who otherwise might not have access to financial services, and CUNA will pursue statutory and regulatory changes to enhance credit unions' ability to serve the underserved.

#### **Subcommittee: Credit Union Powers**

## **Overdraft Protection Programs**

**Position** (*adopted 2004, updated December 2018*): CUNA supports the ability of credit unions to offer overdraft protection plans to help their members resolve short-term financial problems. CUNA supports consumer-friendly, transparent plans that are not marketed or promoted in a misleading or deceptive manner. And, CUNA opposes efforts by the Consumer Financial Protection Bureau or other federal entities to eliminate the ability of credit unions to decide how to design overdraft protection programs.

Credit unions strive to keep their members from relying on the unregulated financial services market to meet their liquidity needs. While the terms of credit union overdraft protection programs may vary, they are structured to pay, rather than return, non-sufficient funds transactions in exchange for fees that are similar to those charged for returned items. This spares members the embarrassment of returned items, as well as additional fees charged by merchants and other payees. Such programs, when used appropriately by members, serve as a valuable alternative to overdrawing accounts and are fully consistent with the philosophy and principles unique to the credit union system.

#### **Subcommittee: Consumer Protection**

## **Payments and Security**

**Position** (*adopted December 2014, reviewed 2018*): CUNA supports a payments environment that facilitates the ability of credit unions and small financial institutions to access and utilize the latest developments in payments, without unfair costs or undue legal restrictions. This includes existing payment systems, such as debit and credit cards, prepaid cards, checks, automated clearing house (ACH), and wire transfers, as well as new and evolving payment systems.

CUNA supports the ability of credit unions to issue competitive and cost-effective debit cards and credit cards to their members. The payments environment must recognize a card-issuing credit union's role and investment in protecting consumers and administering a card program.

CUNA supports a payments security strategy driven by payments providers, such as by issuers, including credit unions, without legislative or regulatory interference. A layered approach to payments security builds on current systems and protects consumers and their data. Layers of payments security include, but are not limited to: fraud analytics; merchant data security standards; Europay, MasterCard, and Visa (EMV) technology; end-to-end encryption; and tokenization.

With regard to the current statutory and regulatory oversight of debit cards, CUNA opposes any further government interference with payment rates (interchange), routing, and exclusivity. CUNA supports enforcement of a meaningful exemption for small debit card issuers, such as under Regulation II. CUNA also opposes legislative or regulatory interference that would adversely affect consumer options, competition, and technological innovation regarding credit cards.

**Subcommittee: Payments**

## **Periodic Membership Fee**

**Position** (*adopted 1982, updated December 2014, reviewed 2018*): CUNA supports giving credit unions the flexibility to be able to charge a periodic membership fee.

**Subcommittee: Credit Union Powers**

## **Political Action: Consent to Solicit for Political Fund Raising**

**Position** (*adopted in 1989, updated December 2014, reviewed 2018*): CUNA seeks relief from the current legal restrictions on credit unions' and credit union members' right to raise political action funds, including prior approval to solicit requirements. Credit unions must have the ability to contribute or direct those funds in support of credit union-friendly candidates for federal, state and local office. Moreover, CUNA will oppose legislation designed to further restrict the ability of credit unions and their members to participate in the election process.

**Advocacy Committee**

## **Political Involvement**

**Position** (*adopted June 2005, updated December 2014, reviewed 2018*): CUNA considers political activism vitally important at all levels of the credit union movement — from credit union members, volunteers and employees — in order to carry the message to legislators and regulators about the unique role of credit unions in the financial world. CUNA urges the leagues and credit unions to continue the development of their political action programs. These programs should include education, fund-raising for political action, participation in Project Zip Code, encouragement of personal involvement in political campaigns, selection of qualified candidates from the credit union movement to seek political office, partisan communications and independent expenditures and direct system support for specific credit-union friendly candidates utilizing all modern political tools (mailings, calls, etc.) within the confines of applicable state and federal laws.

CUNA opposes any legislation that would have an adverse impact on the ability of credit unions or their associations to represent credit unions or their members in Congress, especially with regard to grassroots activism and public communication. CUNA will take all reasonable steps to ensure that the voices of credit unions and their members continue to be heard in Congress and throughout the government without overly burdensome regulation.

CUNA encourages credit unions to be more active in the political process in order to elect credit union friendly candidates.

**Advocacy Committee**

## Powers

**Position** (*adopted 2001, updated December 2014, reviewed 2018*): CUNA believes that all credit unions must be able to engage in business activities necessary to meet the needs of their members and to help foster members' financial security and growth. The decision of what specific products and services should be offered must rest with the officials of the credit union, consistent with state and federal enabling laws. CUNA supports reasonable agency interpretations of such express and incidental provisions that will support credit unions' evolving efforts to provide a range of products and services to members. This includes being able to accept shares and deposits on the terms defined by individual credit unions, making loans of any type appropriate to their membership, and placing funds in a wide range of investment alternatives to be competitive in the marketplace.

**Subcommittee: Credit Union Powers**

## Preemption

**Position** (*adopted 2003, reviewed 2018*): Proposals for federal preemption have to be considered on a case by-case basis, relying on an analysis of the need for, and costs and benefits of, preemption.

**Subcommittee: Examination and Supervision, Consumer Protection, Payments**

## Pricing Restrictions

**Position** (*adopted December 2008, updated December 2014, reviewed 2018*): CUNA believes that the determination of fees and charges associated with the delivery of credit union products and services should be determined solely by the board and management of each individual organization. Therefore, CUNA opposes legislation and regulations and individual enforcement actions that would impose pricing restrictions on credit unions.

**Subcommittee: Credit Union Powers, Consumer Protection**

## Privacy and Safeguarding Members' Information

**Position** (*adopted 1999, updated December 2018*): CUNA recognizes that the individual's right to control personal information is a significant aspect of personal privacy, and the credit union movement believes in applying principles of confidentiality to personal information provided by members. CUNA fully supports efforts to combat identity theft and to ensure the accuracy of consumer credit report information.

**Subcommittee: Consumer Protection**

## Problems in Credit Unions

**Position** (*adopted 1990, updated December 2014, reviewed 2018*): CUNA urges credit union regulators to exhaust all administrative avenues and merger possibilities to provide continued service to credit union members and only liquidate a credit union as a last resort.

CUNA also urges regulators to have a regular dialogue with CUNA and the appropriate leagues about emerging national or regional problems in credit unions, soon enough to

give the private sector the opportunity to address the problems, through education, self-regulation, management assistance and other means, thereby avoiding the necessity of additional regulations.

When regulators seek candidates for assisted mergers with struggling credit unions, state and federal credit unions should have equal opportunity to be considered.

**Subcommittee: Examination and Supervision**

## Promotion of Thrift

**Position** (*adopted June 2005, updated December 2014, reviewed 2018*): Since promoting thrift is a fundamental purpose of credit unions, CUNA actively supports legislation which will encourage consumer savings. Any tax-favored savings program available to other financial services institutions must be available to credit unions to offer to their members.

**Subcommittee: Consumer Protection**

## Public Funds

**Position** (*adopted June 2005, updated December 2008, reviewed 2018*): CUNA supports all credit unions having the authority to pledge securities as collateral for public deposits. If any other depository institution (bank or thrift) is an acceptable depository for public funds, then credit unions should be treated equitably.

**Subcommittee: Credit Union Powers**

## Regulation of Financial Products

**Position** (*adopted September 2018, updated December 2018*): CUNA strongly believes that all financial products and services should be subjected to materially equivalent regulatory oversight, regardless of the nature of the entity providing the product or service. Credit unions deserve an equitable regulatory environment in which to develop and provide these services. Regulators should allow for protected structures through which credit unions and their partners (e.g., CUSOs) can explore and test in a safe environment innovative financial services for the long-term benefit of their members.

**Subcommittee: Payments, Consumer Protection**

## Regulatory Relief and Examination Fairness

**Position** (*adopted 1996, updated December 2014, reviewed 2018*): CUNA believes that a credit union's business decisions should be the responsibility of its board of directors which is in the best position to evaluate members' needs, market conditions, and operating capabilities. Nevertheless, we recognize the responsibility of regulators to protect the safety and soundness of the credit union system. Great care must be taken by the regulators to ensure that the authority over safety and soundness is not applied to other matters.

Credit unions are among the most heavily regulated financial entities in our economy today. In light of that, one of CUNA's highest advocacy priorities is to help establish and maintain a favorable regulatory environment for credit unions. Such an environment should minimize credit unions' regulatory burdens, promote regulator transparency, accountability, and reasonableness, and ensure examination fairness, including when disputes arise between credit unions and their examiners, for state and federal credit unions.

CUNA supports fair and balanced safety and soundness regulation and oversight to protect the financial resources of credit unions and their members; minimize costs to the National Credit Union Share Insurance Fund (NCUSIF) borne by all federally insured credit unions; and preserve credit unions as unique institutions, offering meaningful choices to consumers in the financial marketplace. With the same vigor, CUNA urges regulators to handle the supervision and examination of credit unions in a professional manner, taking into full account legal requirements credit unions must meet as well as the need for credit unions to have reasonable flexibility to serve their members well; examiners should follow all policies and procedures in the examiner's guide closely and provide the legal basis for their directives.

**Subcommittee: Examination and Supervision**

## **Service to Businesses Authorized Under State Law**

**Position** (*adopted June 2017, reviewed 2018*): The Credit Union National Association supports credit unions' ability to lawfully serve businesses that engage in activities that are authorized under their state law, even when such activity may be inconsistent with federal law.

**Subcommittee: Credit Union Powers**

## **Share Draft and Checking Account Regulations**

**Position** (*adopted December 2014, updated December 2018*): In recognition of credit unions' historic practices of providing speedy access to members' funds, CUNA supports expedited funds availability as long as credit union operations are not unduly burdened by restrictive requirements or exposed to excessive fraud.

**Subcommittee: Payments**

## **Share Insurance Coverage of Member Accounts**

**Position** (*adopted 2001, updated December 2018*): CUNA supports credit unions' ability to determine for themselves whether federal or private insurance is in the best interests of their members, with membership approval of a change in share insurance coverage based on full and fair disclosure to all members.

CUNA supports the 1% deposit feature of the National Credit Union Share Insurance Fund, whereby the deposit is an asset for the federally insured credit union and equity for NCUSIF. The Association will take all steps necessary to preserve this funding mechanism. In addition, CUNA supports the maintenance of an appropriate equity ratio at the NCUSIF and the provision in the Federal Credit Union Act that requires the payment of a dividend to federally insured credit unions when the NCUSIF exceeds that ratio.

CUNA supports legislative and regulatory changes in federal share and deposit insurance coverage to assure that the coverage offered to credit union members through the NCUSIF is comparable to the coverage offered to bank and thrift institution customers through the Federal Deposit Insurance Corporation. In that connection, for example, CUNA supports comparable coverage for prepaid cards, when the person giving the card is a credit union member.

**Subcommittee: Examination and Supervision**

## Small Credit Unions

**Position** (*adopted 1999, updated December 2014, reviewed 2018*): CUNA believes each credit union has the right of self-determination with respect to the services it provides its members and the manner in which those services are delivered. This autonomy is derived from the member-owned and democratically-controlled characteristics of credit unions. CUNA supports the continuation and growth of small credit unions, and encourages all components of the credit union system to adopt a similar policy of support and assistance. The success of credit unions of all sizes is vital to the health of the credit union movement. CUNA recognizes that the primary responsibility for the health, strength and growth of small credit unions rests with the members, boards, management, and staff of those credit unions.

**Subcommittee: Small Credit Union Committee, Advocacy Committee**

## Taxes: Deferred Compensation Plans

**Position** (*adopted June 2005, reviewed 2018*): CUNA opposes any interpretation by the Internal Revenue Service that would restrict credit unions from offering deferred compensation plans to their employees.

**Subcommittee: Credit Union Powers**

## Taxes: Tax Exempt Status of Credit Unions

**Position** (*long-standing, reviewed 2018*): CUNA opposes the imposition of income taxes on credit unions because (1) credit unions do not generate profit for the benefit of third-party stockholders, they instead provide additional value to members and (2) credit unions provide a public good by fulfilling their statutory mission to promote thrift and provide access to credit for provident purposes to their members, including those of modest means.

**Advocacy Committee**

## Taxes: Unrelated Business Income Taxes (Ubit)

**Position** (*adopted 2004, updated December 2008, reviewed 2018*): CUNA opposes any imposition of the unrelated business income tax (UBIT) on any financial service offered by any credit union to its members on a not-for-profit, cooperative basis. CUNA supports all appropriate legal and advocacy efforts in opposition to the application of UBIT to such services.

**Advocacy Committee**

## Unique Nature of Credit Unions

**Position** (*adopted December 2014, updated December 2018*): CUNA urges policymakers at all levels of government and at standards setting bodies to ensure that laws, regulation, guidance, and standards reflect clearly the unique nature of credit unions. Along with CUNA, NCUA should help educate and inform all agencies and standards setting bodies about credit unions' unique nature, and urge them, in recognition of credit unions' member focus and distinct role, to exempt credit unions from unnecessary regulatory requirements to the fullest extent allowed under federal law.

**Subcommittee: Consumer Protection, Examination and Supervision**

# World Affairs

**Position** (*adopted 2001, updated December 2014, reviewed 2018*): CUNA supports efforts of credit unions, leagues, the World Council of Credit Unions and its member organizations, and government agencies to encourage the development and support of cooperative financial organizations throughout the world.

CUNA appreciates the representation it receives from the World Council before international regulatory bodies, and remains actively engaged, through the World Council, with credit union systems throughout the world, to work cooperatively to minimize the adverse impact of regulations which have cross-border implications.

**Subcommittee: World Affairs**

# APPENDIX I

## Best Practices, Ethical Standards, Guidelines and Principles Supporting CUNA Policy Positions

### Section 1. Debt Collection

*(Adopted in 1980)*

The Executive Committee of the Credit Union National Association, Inc. on May 28, 1980 unanimously voted to approve the following recommendation from CUNA's Governmental Affairs Committee:

"That CUNA adopt at its May 1980 meeting a 'Debt Collection Code' to guide credit unions' efforts to collect overdue loans from members in a manner that is fair to members. To make this action as meaningful as possible, CUNA will work with the Leagues to inform credit unions about Code provisions and to assist individual credit unions to adopt the Code as policy; CUNA will discuss with other financial trade groups the importance of all creditors having such code."

### Collection Code of the Credit Union National Association

#### Preamble

Credit unions are member-owned cooperative financial institutions. As such, they must observe and respect the confidence and trust placed in them by their member owners, lawmakers and the judicial system. Therefore, as members of credit union leagues and the Credit Union National Association we hereby agree to follow this Collection Code.

#### Purpose

This code is adopted to guide our efforts to collect overdue loans from members in a manner which is fair to the member.

Delinquencies are frequently the result of unforeseen circumstances, but in some cases misuse of credit is the source of the problem. Our commitment to the credit union philosophy requires that we exhibit the same care and concern for the member who is behind in payment as we demonstrated when we granted the loan. Our credit union will be guided by common sense principles of fairness in collecting delinquent loans.

We further recognize an obligation as a credit union to help the member recover financial stability. An offer of financial counseling will be made to every delinquent member, and, if accepted, reasonable effort will be made to assist the member in working out a suitable repayment program.

#### "Member" for Purposes of this Code

In this Code, the term "member" includes any person owing the debt. Therefore, non-members or any person acting as a co-signer, co-maker or guarantor may also be contacted under the provisions pertaining to "member" in this Code. The term "member" does not include a spouse or parent who is not obligated to pay the debt, and they will be treated as a "third party" under this Code.

### **Contacting the Member to Collect a Debt**

All contact with the member about a debt must:

1. Be at reasonable hours;
2. Not be where the member works if the credit union knows or has reason to know that the employer does not allow such contact or if the member requests that he not be contacted at work; and
3. Be through the member's attorney if the member directs the credit union to talk to a particular attorney. However, if the attorney does not respond to a credit union's inquiry within ten business days, the credit union can again contact the member.

### **Contacting a Third Party to Locate a Member**

A credit union which contacts any person other than the member while trying to locate the member to determine the member's home address, telephone number and place of employment must:

1. Identify himself, state that he is trying to locate the member, and, only if expressly requested, identify the credit union;
2. Not state that the credit union member owes any debt;
3. Not contact any third person more than once unless asked to by that person or unless there is a good reason to believe the prior response was incorrect or incomplete and the correct information is available; and
4. Not use a postcard or anything on an envelope or similar communication which indicates that the communication relates to collection of a credit union debt.

### **Contacting a Third Party to Collect a Debt**

Unless the credit union is trying to locate a member, a credit union will not contact anyone other than the member, the member's attorney, or a consumer reporting agency about the debt except as permitted by the Department of Defense or U.S. Civil Service regulations, a court or the member.

### **Ceasing Contact with the Member About a Debt**

A credit union will stop contacting the member about a debt if the member writes the credit union and either states he refuses to pay or asks that contacts stop. The credit union may, however, notify the member that legal action is being taken.

### **Collection Practices**

A credit union will not use collection techniques that harass any person when collecting a debt. Examples of harassment forbidden by this Code are using abusive language; threatening or using physical harm; posting the name of the member owing the debt; and misusing the telephone, such as by repeatedly calling with the intention of annoying the member.

A credit union will not use any false, deceptive, or misleading representation in collecting debts. Examples of such actions include improperly identifying the credit union representative (such as indicating one is an attorney when that is not true); threatening the seizure of property or garnishment of wages unless such an action is lawful and is one the credit union intends to take (but the credit union can counsel the member of

the possible legal consequences of nonpayment); and using any paper which is falsely represented to be issued by a court or government agency.

A credit union shall not use unfair means to collect or attempt to collect any debt. Examples of unfair practices include collecting any amount (including any interest, fee, charge or expense incidental to the principal obligation) that is not expressly authorized by the contract or permitted by law; depositing or threatening to deposit any postdated payment instrument prior to the date on the instrument; threatening to repossess collateral unless the credit union has the right and intends to take possession; and communicating by postcard with the member about the debt (because it would not be a confidential communication).

### **Disputed Obligations**

If a member disagrees with the amount of the debt or the fact that it is past due, the credit union will cease collection efforts until it has investigated the claim and reported the results to the member. If the member continues to dispute the debt, the credit union may then proceed with collection efforts.

### **More Than One Obligation**

If a member has more than one loan with the credit union, all payments by the member shall be applied to loans as directed by the member.

### **Lawsuits to Collect Obligations**

If the credit union files a lawsuit, the suit shall be brought in the court of proper jurisdiction as established by applicable law. Generally this will be where the contract was made or where the member resides, or if the action involves enforcement of an interest in real property securing the member's obligation, where the real property is located.

### **Existing Debt Collection Laws**

Credit unions have established this Code to provide uniform rules for their conduct in working with members who are experiencing repayment difficulties. Where existing laws provide similar or greater protections for credit union members, each credit union must comply with those laws, in addition to this Code.

## **Section 2. Examiner and Regulator Best Practices**

*(Adopted in 1992; Updated in 2010)*

CUNA strongly supports fair and balanced safety and soundness regulation and oversight to protect the financial resources of credit unions and their members; minimize costs to the National Credit Union Share Insurance Fund (NCUSIF) borne by all federally insured credit unions; and preserve credit unions as unique institutions, offering meaningful choices to consumers in the financial marketplace. With the same vigor, CUNA urges regulators to handle the supervision and examination of credit unions in a professional manner, taking into full account legal requirements credit unions must meet as well as the need for credit unions to have reasonable flexibility to serve their members well.

Federal and state regulators should incorporate supervisory policies, procedures, and practices that:

## Regulator Examination Policies

1. Foster credit union uniqueness and facilitate credit unions' ability to serve members. All of the regulator's rules, policies, examination procedures and practices should be consistent with this objective.
2. Provide credit union examiners with thorough training on credit union philosophy and uniqueness, as well as on credit union financial reporting and regulatory requirements. Additionally, examiners should recognize the unique operating environment of credit unions certified as Community Development Financial Institutions.
3. Explain all examination policies and priorities, particularly new ones, and provide the information in one "examination issues" location on the regulator's website and in the regulator's documents, such as letters to credit unions and examiner's guides.
4. Ensure consultation and coordination between the National Credit Union Administration (NCUA) and state regulators when the credit union involved is state chartered.
5. Create a culture within the regulator that requires proper conduct from examiners and other staff at all times and does not tolerate behavior from regulator personnel that is intimidating to a credit union's officials or is otherwise inappropriate.
6. Clarify and define how a regulatory examination is distinguished from an insurance review.
7. Direct examiners to follow all policies and procedures in the examiner's guide closely, including GAAP where applicable, and to provide the credit union with the legal basis or GAAP policy for their directives.
8. Ensure examiners are aware they should focus on safety and soundness issues and should not seek to substitute their business judgment for that of the credit union in the absence of safety and soundness concerns.
9. Direct examiners and regulator personnel to use current and accurate information in all examination reports, Documents of Resolution (DoRs), Letters of Understanding and Agreement (LUAs) and as the basis for administrative actions.
10. Allow a reasonable amount of time before policies take effect, giving every credit union reasonable lead time to implement and/or adapt to new rules, policies, and procedures.
11. Ensure regulator examination policies and practices are implemented fairly and consistently within each region and across all regions. Additionally, while examiners should base recommendations on current information, examiners should have a thorough understanding of any recommendations in past examinations in order to further increase consistency of future recommendations.
12. Differentiate between "guidance" that is often contained in regulator letters to credit unions from "regulations" that require strict compliance. Standards contained in "guidance" should be limited to those standards for which compliance is not mandatory. Any standards for which credit unions will be required to follow should be consistent with sound business practices and issued under the Administrative Procedure Act. Credit unions should have the opportunity to comment on such standards and regulators should undertake periodic reviews for relevance.
13. Address, within examination policies, the rights of a credit union to have its

- attorney, accountant or other appropriate official present at meetings with the examiner or other regulator personnel.
14. Provide that the credit union's board of directors has the right to have credit union personnel present at the exit interview.
  15. Recognize that the credit union may record or transcribe meetings with the examiner or regulator staff.
  16. Acknowledge that the credit union is entitled to offer alternative solutions to address problem issues identified by examiners.
  17. Encourage the credit union to point out to the examiner or regulator staff discrepancies between the examiner's directives and the regulator's examiner's guide.
  18. Promote confidence on the part of credit unions that the regulator's appeals process is fair to all parties, that credit unions and examiners are well-informed about the process and how it may be utilized, and that there will be no reprisals for appealing a regulator directive or decision.
  19. Information about the appeals process should be included on the regulator's website, in the examiner's guide, and on the examination report, as indicated below.
  20. Undertake, on a regular basis, a random sampling review of the regulator's handling of specific supervisory issues and problem cases, separate from the NCUA's Office of Inspector General reports on material losses to the NCUSIF; make a summary of the findings available on the regulator's website.

### **Regulator Examination Reports**

1. Ensure examination reports fairly evaluate the level of risk the credit union's activities present. This includes assessing the safety and soundness of a credit union's lending, investments, and other programs, products, and services, based on the overall performance of the program. For example, a credit union's lending program should be reviewed on the basis of the general performance of its loan portfolio.
2. Require all requests and citations from the examiner or regulator staff be provided to the credit union in writing.
3. Direct examiners to distinguish clearly in the examination report "directives" the credit union would be expected to follow from "recommendations" the credit union would not have to accept. Additionally, examiners should prioritize any directives in the examination report.
4. Release all examination information in a timely manner to the credit union.
5. Require all examiners to provide a listing to the credit union of any records they have removed for review.
6. Permit credit unions to include data, documentation and other input with the examination report addressing differences of facts or opinion between the credit union's officials and the examiner.
7. Provide a listing of the credit union's rights in dealing with examiners and information on how a credit union can appeal decisions of the examiner or other regulator field or regional staff on or with all examination reports.

## Regulator Administrative Actions

1. Instruct examiners to first seek to resolve issues involving material disputes with credit union officials, which would include consideration of a credit union's alternatives, before developing a DoR, an LUA, or taking other administrative action.
2. Direct examiners, if a supervisory action becomes necessary, to follow a hierarchy of administrative actions and for example, not to issue an LUA when a DoR would be more appropriate for the circumstances.
3. Permit a credit union, when a DoR or LUA is drafted, to have the opportunity to review the DoR or LUA within a reasonable time frame, based on the circumstances, and present appropriate alternatives to the examiner prior to accepting the DoR or LUA.
4. Ensure examiners have an understanding of the confidential nature of information obtained during an examination and ensure any information made public by the regulator does not contain such confidential information. Additionally, publication of any administrative action should only occur if doing so is in the public interest, as required by the Federal Credit Union Act.

## Section 3. Home Equity Mortgage Lending Standards and Ethical Guidelines

*(Adopted in 1999)*

### CUNA Member Credit Union Home Equity Mortgage Lending Standards and Ethical Guidelines

**Issue:** Homeowners across the country, seeking to borrow against the equity in their property, may be forced to pay excessive rates and fees, be subjected to other abusive borrowing activity, or be at risk of actually losing their homes, if they fall prey to unscrupulous lending practices known as predatory lending. Such borrowers are often elderly or other individuals facing significant financial demands who are anxious to have access to credit and thus, vulnerable to unconscionable demands and requirements of the predatory lenders.

**Credit Unions Concerns/Interests:** Credit unions have a proud history of service to their members and provide products that meet members' needs and are in members' best financial interests. As member-owned, democratically controlled financial cooperatives, credit unions want to help protect consumers from abuses of predatory lending in the financial marketplace, even though credit unions themselves offer products that are fairly priced, with reasonable terms and conditions.

Under the Federal Credit Union Act and/or regulations from the National Credit Union Administration, more stringent rules apply to credit union mortgage lending than apply to commercial bank home loan products. For example, federal credit unions are subject to a 15% usury rate ceiling, which may be adjusted up to 20% and now stands at 18%. Also, federal credit unions may not charge prepayment penalties. State provisions vary, but many state chartered credit unions operate under similar limitations.

The Credit Union National Association, the largest trade association representing credit unions, condemns the practice of predatory lending. CUNA's Board of Directors calls on every CUNA member credit union to adopt home equity lending standards and ethical

guidelines that will help emphasize credit unions' concern for consumers and further distinguish credit unions as institutions that care more about people than money. CUNA will work with key policymakers, including state and federal credit union regulators, to ensure they support an approach that is designed to increase awareness of the predatory lending problem and highlight credit unions' role as not-for-profit, consumer-owned financial institutions.

## **Guidelines and Ethical Standards**

The following guidelines are designed to apply to non-purchase money closed-end home equity loans. Credit unions abhor predatory lending and seek to protect consumers from such abominable practices. Predatory lending includes home equity-stripping loan products with one or more of the following characteristics:

- Interest rates that are significantly above market rates and which are not justified by the degree of risk involved in providing the credit;
- Excessive balloon payments that require refinancing at a rate that is more than the rate on the existing note;
- Lending without regard to whether the borrower has the ability to repay;
- Requirements for frequent refinancing of the loan resulting in additional costs to the borrower and significant erosion of the borrower's equity;
- Prepayment penalties in excess of actual costs incurred and unpaid;
- Exorbitant fees and insurance premiums that the borrower may be required to finance, further jeopardizing equity;
- Misleading or false advertising.

Predatory lending does not encompass legitimate products such as reverse mortgages or risk-based lending recognized by fair lending and fair credit statutes that allow financial institutions to price loan products by taking into consideration the risk to the institution in making a loan.

Recognizing that predatory lending is fully inconsistent with the philosophy and principles unique to the credit union system, credit unions adopting these home equity lending guidelines and ethical standards agree to:

### **1. Emphasize Member Education**

- Provide a copy of these standards to member/borrowers, as applicable.
  - Educate members regarding the dangers and abuses of predatory lending by offering counseling and other useful information about the lending process.
- Inform members about the differences and advantages associated with credit union lending products, such as applicable usury ceilings, lack of prepayment penalties.
- Inform borrowers about all applicable lending products the credit union offers.
- Assist borrowers in understanding applicable loan disclosures, rates, fees and terms, including any rights of rescission.

## **2. Meet Members' Borrowing Needs**

- Ensure home equity loan products meet the consumer's borrowing needs and ability to repay, consistent with credit union loan policies and legal requirements.

## **3. Prohibit and Refrain from Abusive Practices**

- Exclude terms and conditions that are not justified by the documented risk to the credit union of extending the loan.
- Exclude interest rates that are higher than market indices, except as proportionate to comparable Treasury securities based on the borrower's credit history, income and other indicators of ability to repay the loan.
- Prohibit refinancing of balloon payments at a higher rate than on the original note when not justified by market conditions or the risk of making the loan.
- Exclude fees and insurance premiums from the amount to be financed (does not include extended warranty program).
- Prohibit charging for or financing insurance products or unrelated goods or services without the consent of the borrower.
- Ensure lending staff are well trained to avoid potentially misleading statements in connection with a loan transaction.
- Prohibit loan "flipping", which is providing a loan to a borrower to refinance an existing home loan when the new loan does not have a net benefit to the borrower, taking into consideration the terms of both loans and the borrower's circumstances.
- Exclude mandatory arbitration clauses that limit the rights of borrowers to seek redress in court should problems arise.

## **4. Support Efforts in the Marketplace to Prohibit Predatory Lending**

- Follow FNMA and FHLMC anti-predatory lending guidelines, which include key provisions such as:
  - Loans purchased may not have points or fees that generally exceed 5%, excluding discount points.
  - Prepaid single-premium credit life insurance may not be sold in connection with loans purchased.
  - Lenders which sell to FNMA or FHLMC must report on loans they are servicing each month.
  - Waivers should not be allowed from the requirement that servicers maintain escrow accounts for the payment of taxes, insurance premiums, etc. for borrowers with "blemished" credit records.

## **Section 4. Overdraft Protection Programs Guidelines and Ethical Standards**

*(Adopted in 2004; Updated in 2009)*

CUNA's Board of Directors also calls on every CUNA member credit union that offers overdraft protection services to adopt overdraft protection standards and ethical guidelines that will help emphasize credit unions' concern for consumers and further distinguish credit unions as institutions that care more about people than money.

When offering overdraft protection services, credit unions adopting these guidelines and ethical standards recognize that the following practices are not consistent with the credit union philosophy and principles and publicly affirm that they will not engage in any of these practices:

### **Deceptive Advertisement**

Advertising, representing, or implying that the member should expect that all overdrafts will be paid but then stating in other documents that the paying of overdrafts is discretionary, which is a standard feature of overdraft protection plans. Such advertising may lead members to rely on the service in expectation that all overdrafts will be paid, which would be detrimental if any overdrafts are not ultimately paid by the financial institution.

### **Enticing Members to Overdraw Accounts Repeatedly**

Advertising or promoting the overdraft protection plan in a manner that encourages the member to overdraw repeatedly his or her share draft account, as opposed to such a plan being used as an occasional convenience for the member. The frequent overdraw of accounts is a practice that financial education programs, such as those offered by credit unions, generally discourage.

### **Structuring Programs that Mislead Members**

Including a feature that records the amount of coverage being offered to cover overdrawn share drafts as part of the "available funds," such as on ATM receipts, online statements and telephone balance statements.

### **Failure to Inform Heavy Users of Overdraft Protection Programs of Alternatives**

Overdraft protection programs may not be appropriate for members who heavily use and rely on overdraft protection programs as a means to pay a significant proportion of everyday living expenses. For these members, credit unions may offer a number of other products and services that would be more appropriate. These may include transfers from a savings account to the share draft account, as well as other types of less expensive secured and unsecured loans that the credit union offers to all its members.

### **Failure to Provide Financial Counseling Information**

Credit unions recognize that they have a role in helping their members use overdraft protection services in a responsible manner. In addition to providing adequate disclosures regarding the features and fees associated with the programs, credit unions should also provide information regarding

counseling services provided by the credit union or other reputable counseling services.

## **Section 5. Payday Lending Guidelines and Ethical Standards**

*(Adopted in 2009)*

CUNA strongly encourages credit unions to provide reasonable alternatives to predatory payday lending and supports the following principles for credit union short-term lending to help consumers avoid a cycle of debt:

- Credit union payday loan alternatives should combine reasonable rates of interest and fees with counseling and systematic savings.
- The reasonable costs to borrowers for such alternatives should be determined based on a number of factors, such as the credit union's costs of making the loan, potential credit losses, and a reasonable return to the lender.
- Credit unions should determine whether a more appropriate credit union loan product is available to an individual before extending the payday loan alternative service to that person.
- Credit unions should generally not provide numerous payday alternative loans to an individual borrower over a short time period if additional high fees are charged for each loan.
- Credit unions are encouraged to report positive payday alternative loan payment histories to credit bureaus.
- Credit unions are encouraged to help members understand their loan terms and rates.

# APPENDIX II

## Historical Statements

### Section 1. Renaissance Commission Vision Statements

*(Adopted in 2001)*

#### **Renaissance Commission Vision Statements**

##### **Vision Statement on the Mission of Credit Unions**

The purpose of credit unions is to promote the economic well-being of all people, including those of modest means, through a Credit Union System which is cooperative, member-owned, volunteer directed, not-for-profit, and therefore tax-exempt; to provide a secure financial alternative for all consumers, and to provide financial and related products and services to members.

- Credit unions conform to the above principles, and therefore are not subject to income tax, and have their own unique regulatory and share insurance system.
- Credit unions generate wealth and benefits for their members in a number of ways, and those members incur tax obligations as the benefits are distributed in the form of dividends.
- Credit unions include service to people of modest means in their business activities because of the inherent dedication of not-for-profit, cooperative financial institutions to such service, the traditions and values of credit unions, and the commitment of boards of directors to credit union values.

##### **Vision Statement on Powers and Authorities**

Credit unions, including corporate credit unions, must be able to engage in business activities necessary to meet the needs of and to provide opportunities to their members. The decision of what specific products and services should be offered must rest with the member/owners of the credit union. Credit unions must be able to accept shares and deposits on the terms defined by the credit unions, to make loans of any type appropriate to their membership, and to place funds in a wide range of investment alternatives to be competitive in the marketplace. Credit unions must have the ability to build additional capital in a way that does not dilute the cooperative ownership and governance structure of credit unions. This additional capital should be subordinated to credit unions' share insurance funds, so that credit unions have the financial base to offer these services and adjust to fluctuating economic conditions.

##### **Vision Statement on Field of Membership**

All consumers have the right to improve their financial well-being through the services of not-for-profit financial cooperatives. To that end, credit union boards of directors must have significantly greater flexibility to determine their fields of membership to enhance safety, soundness and service.

##### **Vision Statement on Regulation and Insurance**

Regulators should focus only on those activities that are materially unsafe and unsound.

In addition, regulators must ensure compliance with applicable laws. A regulatory environment must exist that advances the interests of credit unions by empowering them to provide the range of products and services they determine are important to their memberships. There should be a viable dual chartering system. The NCUA and state supervisory authorities should act cooperatively. Actions taken by the NCUA Board on NCUSIF matters should be separate from those taken on NCUA regulatory and supervisory matters, without creating a separate Board or dividing the agency. In addition, a private insurance alternative should be available to all state chartered credit unions.

## **Section 2. Principles Guiding CUNA Policy on Legislative and Regulatory Issues**

*(Adopted in 1996)*

In early 1996 the leadership of the Credit Union National Association decided it was essential that CUNA clearly establish the criteria that determine the legislative and regulatory agenda of the association. Unlike other smaller, more specialized credit union trade associations, CUNA through the state leagues represents the full range of credit unions — with their diversity of size, charter, and field of membership. Diversity presents challenges, but diversity coupled with cooperation has always been a key to distinguishing CUNA from other trade associations. This document will allow all credit unions to understand the principles that drive CUNA's representation of credit unions.

The basic mission of CUNA's governmental affairs program continues to be to assure the survival and growth of credit unions as unique financial intermediaries, providing them with the flexibility to serve the best interests of their members. CUNA believes that every consumer should have access to financial services from one or more credit union. The following defining characteristics of every credit union will be vigorously defended by the Credit Union National Association:

- A federal or state chartered financial cooperative;
- Member-owned;
- Democratically controlled;
- Not-for-profit; and
- Volunteer-based.

In order to maintain credit unions as unique institutions, CUNA has identified the following six guiding principles upon which the association's national representation of credit unions is based:

- Credit unions must have equal access to the financial marketplace so that credit unions can offer their membership the financial services they need and want.
- Credit unions must retain their tax-exempt status.
- Credit unions must be supervised by an independent federal agency or by a viable state regulator, in order to foster and preserve a regulatory environment that recognizes credit unions as unique financial service providers.
- Credit unions must defend the opportunity to choose between chartering alternatives.

- Credit unions must provide members with cooperatively funded share insurance, administered either by an independent agency of the federal government or by an adequately diversified private corporation.
- Credit unions must have the ability to create without unreasonable government interference the cooperative support systems they need to serve their membership effectively and efficiently, including service organizations, trade associations, financial intermediaries, and correspondent arrangements.

These policies are not listed in any order of priority because they are all essential in assuring the continuation of credit unions. If any direct challenge is issued by Congress or by a federal agency to any one of these positions, CUNA is committed to oppose forcefully such an attack.

The political arena, however, often addresses change in terms of compromises or trade-offs. If a legislative or regulatory proposal bolsters one of the six fundamental policies stated above but to the detriment of another policy, CUNA's leadership is committed to providing credit unions an opportunity to voice their opinions prior to the association taking a public position on behalf of the credit union movement. Time may be of the essence, however, so it is the responsibility of each league to help maintain a communications system with its member credit unions to allow rapid response.

Before CUNA takes a position on any issue affecting credit union operations, which may involve legislative or regulatory action, the association's leadership will specifically consider whether a position in support or opposition of the particular issue furthers the six fundamental policies of the association. Those specific issues that do so will become immediate priority issues on which the association will focus its resources. Other policy actions may be advocated by CUNA but the actions may be identified as issues of less immediacy requiring fewer resources or issues where working in a coalition of trade associations with similar interests is preferable. This consideration of priority will help CUNA to allocate its finite resources appropriately.

The Credit Union National Association remains committed to serving the best interests of the credit union movement and the 70 million consumers who own the nation's 12,000 federal and state chartered credit unions.

