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May 21, 2018

Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

Re: Request for Information Regarding the Bureau’s Supervision Program, Docket No. CFPB-2018-0004

Dear Ms. Jackson:

On behalf of America’s credit unions, I am writing in response to the Bureau of Consumer Financial Protection’s (Bureau) Request for Information (RFI) Regarding the Bureau’s Supervision Program. The Credit Union National Association (CUNA) represents America’s credit unions and their 110 million members.

The Bureau is seeking comments and information from interested parties to assist it in assessing the overall efficiency and effectiveness of its Supervision Program, and, consistent with the law, considering whether any change to the program would be appropriate.

I. Executive Summary

The Bureau’s Division of Supervision, Enforcement & Fair Lending (SEFL) executes the Bureau’s supervision and enforcement duties, as mandated by the Consumer Financial Protection Act (CFPA). The Bureau has supervisory authority over insured depository institutions and credit unions with total assets over $10 billion and their affiliates, as well as non-depository financial institutions, regardless of size, in certain specific markets such as mortgage companies, payday lenders, and private education lenders. The Bureau also has supervisory authority over non-depository larger participants in other markets as the Bureau defines by rule.

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1 CFPA § 1021 (c)(4); 12 U.S.C. § 5511(c)(4).
3 See id.
CUNA and its membership have observed, since the Bureau’s inception in 2011, that its examination processes have room for improvement. CUNA’s letter discusses improvements that the Bureau can make to its examination processes that would benefit credit unions, the financial services industry, and consumers. Most importantly, CUNA urges the Bureau to have an understanding and appreciation of the credit union not-for-profit structure and business model as it engages in examinations, enforcement actions, and regulatory activities.

II. Credit Unions’ Roles in the Industry

CUNA appreciates the opportunity to comment on this RFI Regarding the Bureau’s Supervision Program. CUNA is the largest trade association in the United States serving America’s credit unions. With its network of affiliated state credit union associations, CUNA serves over 5,550 credit unions, which are owned by 110 million members collectively.

Credit unions, which may be federally chartered or state chartered, are not-for-profit, tax-exempt organizations owned and operated by their members for the benefit of their members. Credit unions operate in every state and territory in the United States, and were established “for the purpose of promoting thrift among [their] members and creating a source of credit for provident and productive purposes.”4 In contrast, banks and savings associations are for-profit financial institutions that are either investor owned or mutually owned by their customers.

Credit unions only operate to benefit their members and are not beholden to shareholders or profits. As such, credit unions often provide lower rates on loans and fees for services, higher returns on deposits, and more communication with members. Because member service is the primary emphasis and purpose of a credit union, consumers can rely on fair, transparent, and equitable treatment. Consumers understand the difference between a credit union and a bank or other financial services provider. As illustrated by Consumer Reports, credit unions were among the highest rated services it ever evaluated, “with 93 percent of … customers highly satisfied, on average, vs. 69 percent for the four biggest banks.”5 Credit unions’ inherent consumer focus demonstrates why they require less oversight for consumer protection requirements compared to banks and other for-profit financial institutions.

The Bureau currently has the authority to write consumer financial protection regulations and issue guidance that will affect credit unions, and has primary examination and enforcement authority over consumer financial protection regulations for institutions with

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4 NCUA, A Brief History of Credit Unions, available at https://www.ncua.gov/About/Pages/history.aspx.
5 Jeff Blyskal, Choose the Best Bank for You, Consumer Reports, available at http://www.consumerreports.org/banks-credit-unions/choose-the-best-bank-for-you/ (Dec. 4, 2015) (“That satisfaction is driven by good customer service, not surprising when you consider that credit unions are owned and managed by their members.”).
over $10 billion in assets.\textsuperscript{6} As the clear majority of credit unions have asset sizes under $10 billion, the Bureau only has examination and enforcement authority for seven credit unions.\textsuperscript{7}

CUNA understands the Bureau’s role in regulating the financial services industry and ensuring bad actors and irresponsible lending practices are controlled so this country does not repeat the mistakes of the 2008 financial crisis. Indeed, avoiding these mistakes was why the Bureau was created. Rather than impulsively reject the creation of the Bureau, credit unions acknowledged that consumers may need additional protections from Wall Street banks and abusers of consumers, when Congress considered legislation that would become the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act (Dodd-Frank Act).

However, as the Bureau has acknowledged, credit unions were not responsible for the 2008 financial crisis, and were instead the trusted institutions that consumers looked to for safe and competitively priced financial products and services.\textsuperscript{8} Therefore, CUNA strongly believes the Bureau’s efforts and resources must focus on the problem actors in the industry, not credit unions.

We are encouraged by the Bureau’s series of RFIs aimed at transforming the Bureau into a better and more efficient agency. We believe the changes articulated in this letter are ones the Bureau can implement to better focus its time, effort, and resources on the problem actors in the industry, upholding the intent of the Dodd-Frank Act.

III. CUNA Recommendations

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

The Bureau has exclusive examination and primary enforcement authority over credit unions with assets over $10 billion for compliance with consumer financial laws, as authorized by section 1025 of the CFPA.\textsuperscript{9} Currently, only seven of nearly 5,700 federally insured credit unions (FICUs) are above the $10 billion threshold and thus subject to Bureau examination and enforcement. Because of the different structure and business model of credit unions, primary examination and enforcement over all credit unions—

\begin{itemize}
  \item \textsuperscript{6} 12 U.S.C. § 1551.
  \item \textsuperscript{7} The NCUA Office of National Examinations and Supervision (with the relevant state supervisory authority for state-chartered credit unions) supervises credit unions for safety and soundness if they have assets over $10 billion.
  \item \textsuperscript{8} See Feb. 28, 2018 Remarks by Mick Mulvaney, Bureau Acting Director, at CUNA Governmental Affairs Conference (stating, “We recognize the fact that you all did not cause the financial crisis . . . and that you should not be regulated like the folks who might have done those things.”).
  \item \textsuperscript{9} 12 U.S.C. § 1551.
\end{itemize}
including the largest seven—should be under the control of the NCUA and/or the appropriate state regulator.

CUNA supports a change by the Bureau to transfer primary examination and enforcement authority of all FICUs for compliance with consumer protection laws and regulations to the NCUA and/or the appropriate state regulator. This change would include delegating the Bureau’s examination and enforcement authority over credit unions with over $10 billion in assets. CUNA supports this change as it will enable the Bureau to fully focus its examination and enforcement efforts on Wall Street banks and other abusers of consumers, while ensuring credit unions continue to be adequately supervised by the agency most proficient with its structure and operation. In addition, this change would streamline the examination and enforcement efforts for these largest credit unions, which are subject to duel examination or even triple examination for a federally insured state chartered credit union.

1. The Bureau Has the Authority to Delegate Responsibilities to the NCUA

The Bureau can delegate its examination and enforcement over the seven largest credit unions to the NCUA, by exempting these credit unions from section 1025 of the CFPA.\footnote{See Letter from NCUA Chairman McWatters to then-Bureau Director Cordray, July 6, 2017.} \footnote{12 U.S.C. § 5512(b)(3).} This delegation can be provided to the NCUA based on the Bureau’s authority under section 1022(b)(3)(A), which states that the Bureau:

\begin{quote}
[\textit{M}ay conditionally or unconditionally exempt any class of covered persons \ldots from any provision of this title \textit{X}, or from any rule issued under this title \textit{X}, as the Bureau determines necessary or appropriate to carry out the purposes and objectives of this title, taking into consideration the [following] factors \textit{as appropriate}: (i) the total assets of the class of covered persons; (ii) the volume of transactions involving consumer financial products or services in which the class of covered persons engages; and (iii) existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections.\textit{11}]
\end{quote}

This provision allows the Bureau to delegate primary enforcement authority over credit unions with over $10 billion in assets, considering the three statutory factors. First, credit unions’ total combined assets are far less than the total assets of banks subject to the Bureau’s enforcement authority, and are minor compared to the portfolio of financial institutions under the Bureau’s jurisdiction. Second, while the transaction volume of these top credit unions is high, this factor is not comparable to banks, as credit unions are owned by the members they serve, who therefore have greater control over the institutions’ operations. Third, the Bureau would not cede control over credit unions with this delegation, as it would retain rulewriting authority over all credit unions, and could
participate in examination and enforcement decisions should it deem such involvement necessary.

2. NCUA Chairman McWatters Supports CUNA’s Position

NCUA Chairman McWatters wrote to then-Bureau Director Cordray on July 6, 2017, requesting that FICUs be exempt from the examination and enforcement provisions of section 1025\(^{12}\) of the CFPA.\(^{13}\)

In this letter, Chairman McWatters stated that:

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

CUNA strongly supports Chairman McWatters’ position and urges the Bureau to accept and implement his guidance.

3. The Bureau Can Consult or Assist the NCUA, If Necessary

If the Bureau delegates examination and enforcement authority over credit unions with over $10 billion in assets to the NCUA, the NCUA will consult with the Bureau to ensure its mission is preserved. As Chairman McWatters has stated, the NCUA’s Office of Consumer Financial Protection coordinates and works with the Bureau.\(^{14}\) Both agencies are members of the Federal Financial Institutions Examination Council (FFIEC), which is tasked with promoting consistency in the supervision of financial institutions and encouraging uniform examination standards among its member agencies.\(^{15}\) This interagency coordination provides the mechanism for communication about financial institution practices, and would allow the Bureau to provide feedback on the examination and enforcement of consumer protection regulations for the largest credit unions.

\(^{12}\) 12 U.S.C. § 1551 (Mandates the Bureau can have exclusive examination and enforcement authority of consumer protection regulations over credit unions with over $10 billion in assets).

\(^{13}\) Letter from NCUA Chairman McWatters to then-Bureau Director Cordray, July 6, 2017.

\(^{14}\) See id.

\(^{15}\) The FFIEC was established on Mar. 10, 1979, pursuant to Title X of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (FIRA), Public Law 95-630. Federal agency members include the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the NCUA, the Office of the Comptroller of the Currency (OCC), and the Bureau. In 2006, the State Liaison Committee (SLC) was added to the Council as a voting member, and this includes representatives from the Conference of State Bank Supervisors (CSBS), the American Council of State Savings Supervisors (ACSSS), and the National Association of State Credit Union Supervisors (NASCUS).
4. The Bureau Has Regulatory Authority Over Consumer Financial Services

If the Bureau determined there were practices in the financial services marketplace that warranted further regulation and government oversight, it could always address these practices through regulations for financial institutions. In the past seven years, the Bureau has imposed many new regulatory requirements. These regulations included additional requirements for credit union mortgage loans, small dollar loans, remittance transfers, as well as credit union reporting requirements. We expect the Bureau to continue to monitor practices in the industry and impose regulatory requirements if it can justify a need. This Bureau authority would not change if it no longer had primary examination and enforcement authority for consumer protection regulations for credit unions with over $10 billion in assets.

B. Examination Processes

If the Bureau does not use its exemption authority under CFPA 1022(b)(3) to provide the NCUA with primary examination and enforcement of consumer protection regulations for credit unions with over $10 billion in assets, we urge it to work closely with the NCUA and/or the appropriate state regulator in its examination and enforcement of credit unions. At a minimum, NCUA and/or the appropriate state examiner should be a partner throughout the examination process.

CUNA has the following specific comments and recommendations regarding the Bureau’s examination processes for credit unions.

1. Timing, Frequency, and Scope of Supervisory Exams

The Bureau should not use a “one-size-fits-all” approach to examining financial institutions under its jurisdiction, and examinations should be tailored based on the structure, operation model, and complexity of the financial institution. The Bureau examines a broad variety of financial institutions with different structures, charters, and product offerings. Examinations, including the duration, scope, frequency, and resources used, should depend on the type of financial institution being examined.

Specifically, the Bureau must recognize the difference between the not-for-profit credit union model and for-profit financial institutions. The resources dedicated to examinations should be based on the risk of the financial institutions, and examinations for credit unions should not be as extensive as they are for for-profit financial institutions that have more inherent risk. Furthermore, credit unions are examined by prudential regulators and for some, state regulators, and therefore do not require a second or in some cases, third, extensive examination.
2. **The type and volume of information and documents requested in Information Requests.**

The Bureau should coordinate information requests for credit unions with the NCUA or the appropriate state regulator to prevent duplicative efforts and wasted resources. In addition, information requests should be narrowly tailored and clearly communicated to the credit union.

3. **The effectiveness and accessibility of the CFPB Supervision and Examination Manual (Exam Manual).**

The Exam Manual is a helpful resource to credit unions and should be updated frequently to reflect changes in regulations and interpretations. When updates to the Exam Manual are made, institutions should be notified so they are aware of the changes.

4. **The efficiency and effectiveness of onsite examination work.**

The Bureau should improve the efficiency of the examination process with the goal of reducing resources needed to supervise credit unions. Given today’s developments in technology and communication, the physical presence of examiners should be minimal, and examinations should not be time consuming and overly burdensome for credit unions. CUNA has the following recommendations to improve onsite examination efficiency for credit unions:

- The Bureau should gather data and information before conducting examinations, so it knows ahead of time the areas that will need attention and can send the appropriate examiners that are specialists in those areas.

- The Bureau should have a thorough understanding of the credit union, its products and services, and its examination history ahead of time, so it can send only the number of examiners necessary to perform an on-site examination. By conducting thorough preparatory work, Bureau examiners can limit their onsite presence, which will save time and resources for both the Bureau and the credit union. If the Bureau can review information off site and outside of the credit union, then it should do so. A more limited physical presence by examiners will enable credit unions to continue conducting their day-to-day operations and member services during their examinations.

- The Bureau must employ well-trained, competent examiners for credit unions that have experience and knowledge of credit unions and their unique not-for-profit structure and business model. Examiners should be knowledgeable about the specific credit union and the characteristics of its membership and community it serves.
• Bureau examiners must not apply guidance or best practices as if they were enforceable regulation or a regulatory standard. Guidance and best practices should be mentioned to credit unions as recommendations, not requirements.

• Bureau examiners should meet with credit union staff and discuss preliminary findings prior to the exit meeting. Examiners should also be flexible and open to discussion and exchange of perspectives with credit union staff. Bureau examiners should always be cognizant that the goal and mission of credit unions is to serve consumers, and they inherently want the best products and services for their members.

• Bureau examiners and the central office should be transparent and forthcoming in examinations. If there is an issue with the credit union’s practices, it should be communicated and there should be a plan in place to correct the issue. Examiner job performance should not be based on the amount of issues or problems found in the credit union examination.

• Examiner reports must not be delayed due to specific examiner or Bureau administrative circumstances. CUNA strongly urges the Bureau to have procedures in place for examination reports to always be provided in a timely manner. Credit unions want their members to get the best products and services they can and if there are any operational issues, they want to be aware of them so they can quickly be remedied.

5. The clarity, organization, and quality of communications that report the results of supervisory activities, including oral communications from examiners and Supervisory Letters and Examination Reports.

CUNA urges the Bureau to provide timely reports, communications, and feedback to credit unions. Credit unions want to complete the examination process in a timely manner, so they can dedicate their resources toward helping members.

6. The clarity of matters requiring attention (MRA) and the reasonability of timing requirements to satisfy MRAs. An MRA is used to address violation(s) of Federal consumer financial law or compliance management weaknesses. MRAs often require a written response to the Bureau and will include a due date for completion.

We urge the Bureau to follow up on MRAs and subsequent correction plans in a timely manner, so the credit union can resolve any issues and move forward. The Bureau should not take extensive time to resolve these matters, as that is not beneficial to consumers.
7. The process for appealing supervisory findings.

CUNA urges the Bureau to provide fair, transparent, and clear points of entry and procedures for appeals or dispute resolutions that can be utilized without retaliation or fear of retaliation. Financial institutions must have the ability to articulate their different interpretation of Bureau findings without concern that future examinations will be onerous or more extensive than in prior years.

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CUNA and credit unions respect and support the Bureau’s goals of protecting all consumers in the financial marketplace. This goal is the foundation for all credit unions and the reason consumers consider credit unions the safest and most trustworthy financial institutions. Indeed, the founders of the American credit union system believed that “the people’s welfare can best be secured by institutions organized by the people themselves.”16 Because our goals are aligned with the Bureau’s, we hope to work together as the Bureau moves forward with its structural, functional, and operational changes. As part of that collaboration, CUNA respectfully urges the Bureau to address the issues identified in this letter.

On behalf of America’s credit unions and their 110 million members, thank you for your consideration.

Respectfully submitted,

Elizabeth A. Eurgubian
Deputy Chief Advocacy Officer & Senior Counsel

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