



National Credit Union Administration

Office of the Chairman

May 24, 2017

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Director Cordray:

RE: Credit union compliance with CFPB rules

As a prudential regulator, the National Credit Union Administration is charged with insuring and safeguarding the vitality of our nation's credit union community and the safety and soundness of the National Credit Union Share Insurance Fund (NCUSIF). The NCUA works to ensure safety and soundness, as well as compliance with applicable federal regulations, in a credit union system comprising approximately 5,785 federally insured institutions holding over \$1.3 trillion of assets for the benefit of approximately 107 million memberships. The agency has a long and successful history of providing credit union members with the types of protections the Bureau strives to extend to all consumers of financial services.

Credit unions' unique structure as not-for-profit, member-owned, and democratically controlled financial institutions serves to advance the core credit union mission of providing affordable financial services, benefitting both credit union members and their communities. Institutions vary greatly; however, credit unions tend to be modest in size. Although some individual credit unions are much larger, the median size for federally insured credit unions is less than \$30 million in assets. Also relevant from a regulatory perspective, credit unions have relatively few employees—the median staff size is a mere eight employees—and they struggle to stay abreast of complex and evolving compliance requirements without the retention of often cost prohibitive counsel, accountants, financial advisors, and other professionals.

On October 3, 2016, my fellow NCUA Board Member and then-Chairman, Rick Metsger, submitted comments on behalf of the NCUA regarding the Bureau's proposed rule regarding payday, title and other high-cost installment loans. Board Member Metsger laid out the compelling case for an exemption from the final rule for payday alternative loans (PALs) made by federal credit unions (FCUs) in accordance with NCUA Regulations. Mr. Metsger argued correctly that the NCUA already provided credit union members with the consumer protection the Bureau hoped to realize, rendering application of the proposed rule and the associated cost redundant and unnecessary. He spoke for the entire Board in calling for the Bureau to acknowledge the NCUA's proactive supervisory role as a prudential regulator.

Although there are many additional areas where regulatory relief is warranted for credit unions and community banks, there are two in particular that justify consideration on the merits. I believe the Bureau could alleviate the compliance burden of credit unions with respect to the Home Mortgage Disclosure Act (HMDA), as well as the Unfair, Deceptive and Abusive Acts or Practices (UDAAP)

The Honorable Richard Cordray

May 24, 2017

Page 2

requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), and do so without sacrificing consumer protection. Such regulatory relief would lessen the financial burden on the credit union community, thereby enhancing the capital positions of credit unions and the NCUA's efforts to ensure the safety and soundness of the NCUSIF.

Section 1022(b)(3)(A) of the Dodd-Frank Act provides that the Bureau may exempt any class of persons, service providers, or consumer financial services from certain regulations. Use of this permitted, yet underutilized, statutory authority is appropriate to address compliance costs and the unintended consequence of limiting access to affordable financial services for many millions of middle class credit union members through the enactment of needless regulatory burdens. Among the factors involved in determining whether to provide an exemption include asset size and volume of transactions. I urge the Bureau to exercise this exemption authority whenever possible with respect to credit unions, given the community's long history of serving their members and protecting consumers.

HMDA data reporting requirements are one area where the case for a credit union exemption is especially compelling. Over many years, HMDA reporting has provided valuable information identifying the housing and investment needs of communities, in addition to detecting possibly discriminatory mortgage-lending patterns. Beginning in 2018, the thresholds governing credit unions required to report HMDA data include, but are not limited to, meeting a minimum asset level, originating at least 25 closed-end mortgage loans in each of the previous two years, and originating at least 100 open-end lines of credit. [12 C.F.R. § 1003.2(g)(1).] Consideration should be given by the Bureau to raising the various thresholds to a more substantive asset and transaction volume level to further reduce the reporting burden on smaller institutions. In addition, credit unions must record an additional 25 HMDA data points for submission in 2019.

Of these 25 new data points, the Dodd-Frank Act included 11, and the Bureau added another 14 through its rulemaking authority. [12 C.F.R. § 1003.4.] The recording and submission of the additional data fields create a significant burden on credit unions. Compliance will entail changing forms to collect all data, revising systems for storing and reporting data, and re-training or hiring additional staff. I recommend that the Bureau exempt credit unions from collecting and reporting the additional 14 data points imposed by the Bureau's regulatory change. Such an exemption would provide much-needed regulatory relief to the credit union community and assist these institutions in their mission to serve middle class Americans, those striving to join the middle class, and small business owners, employees, customers and vendors. While the Bureau may consider such additional data points as value added for econometric modeling or other purposes, please consider the distinct economic burden placed on the credit union community by this exercise.

When Congress enacted the Dodd-Frank Act, it included an expansion of the Federal Trade Commission Act's (FTC Act) prohibitions against unfair or deceptive acts or practices in the Consumer Financial Protection Act, which also included a prohibition against abusive conduct—namely UDAAP. [12 U.S.C. § 5536 (a)(1)(B)]. The legal standards for unfairness and deception were developed after years of FTC enforcement action; however, no similar history at the federal level exists regarding abusive conduct, which is defined broadly in Section 1031(d) of the Dodd-Frank Act. In addition, the Bureau has yet to issue a regulation or formal guidance to further define the term and implement its UDAAP authority.

The Honorable Richard Cordray
May 24, 2017
Page 2

While the need for regulatory relief under UDAAP is great, the case for a credit union exemption is complicated by the fact that the Dodd-Frank Act eliminated the authority of the NCUA and other federal financial regulators to issue regulations under the FTC Act. The NCUA's regulations against false advertising and other unfair or deceptive conduct remain. In spite of this, without restoration of FTC Act authority and reinstatement of the NCUA's Credit Practices Rule, exemption from UDAAP would leave credit union members with arguably less protection from abuse than they enjoy today.

Nonetheless, the Bureau could go far to extend relief to credit unions and ensure greater protection to consumers by providing much-needed clarity with respect to UDAAP, either through rulemaking or guidance. Uncertainty regarding supervisory expectations can limit the ability of credit unions to provide the services sought by their members. I believe the Bureau should promptly issue clear, transparent guidance that is reasonable, objective, and specifically tailored for the credit union community so these not-for-profit financial institutions can comply fully with the law and meet the needs of their members in a cost efficient and effective manner.

Thank you for considering my request and for your appreciation of the unique structure and mission of the not-for-profit credit union community. I look forward to continuing our collaboration on issues of mutual interest. The NCUA will continue to execute our duties as a prudential regulator so as to maintain the safety and soundness of the NCUSIF and ensure compliance with the letter and spirit of all laws we are charged to enforce, including consumer financial protection laws.

Sincerely,



J. Mark McWatters
Acting Chairman