League of Southeastern Credit Unions

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Gerard Poliquin
Secretary of the Board
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Re: 2017-2021 Strategic Plan

Mr. Poliquin,

The League of Southeastern Credit Unions (LSCU) appreciates the opportunity the National Credit Union Association has provided to comment on its 2017-2021 Strategic Plan. The League supports the efforts of the NCUA to promote a safe and sound credit union system and confidence in cooperative credit. LSCU supports a number of the NCUA's initiatives in the coming five years, but has concerns regarding others.

The League of Southeastern Credit Unions is a trade association that represents 270 credit unions in Florida and Alabama. Our mission is "To create an operating environment that enables credit unions to grow and succeed." The NCUA plays a vital role in the LSCU fulfilling its objectives. The five year plan presents a vision of how we can cooperate in achieving those objectives.

Indeed, the NCUA has recently helped create a better operating environment for credit unions with changes in some regulations. The upcoming Field of Membership expansion will allow many people access to better financial services than they presently have. And the reform of the Member Business Lending regulations will promote new opportunities to create jobs and economic growth.

This regulatory relief is a welcome improvement that will enable greater credit union success. Credit Unions have already achieved great success recently according to recent call report data. Credit Union assets have risen to $1.2 trillion, loans grew 10.5% from 2014-2015 to $787 billion and membership increased 3.5 million to 102.7 million.[1] Yet, there are concerns for the credit union system and the economy as a whole.[2] Growth has slowed in the developing world which may have a negative impact on growth here in the United States, where growth has been minimal since the recession began and interest rates, a primary tool in stimulating growth, have essentially been exhausted.[3] Though uncertainty is not a recent development in our economic outlook, it is just as important to be vigilant against trends that may appear in our present environment and threaten credit union success as it was during the recession.

It is with that perspective in mind that we look at the NCUA's Five-Year Plan and the operational environment of credit unions in the years ahead. Besides the economic challenges ahead, there is the challenge presented by greater reliance on technology by consumers, financial institutions and regulators. There is also the impact of regulatory rule making that will affect the growth potential of credit unions and impact consumers' lives, as well as the economy as a whole. These factors cannot be easily disentangled from one another, but we must make an effort to focus on the impact of these challenges. Furthermore we should focus on those conditions in which we can have a positive impact and invest our resources there.

Issues of Interest in the Strategic Plan

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[1] Press Release, National Credit Union Administration, Credit Union Deposits Surpass $1 Trillion (Mar. 3, 2016) (https://www.ncua.gov/newsroom/Pages/news-2016-march-call-report-data.aspx)
[2] *Fighting the next recession: Unfamiliar ways forward*, The Economist, Feb. 20, 2016, http://www.economist.com/news/briefing/21693205-policymakers-rich-economies-need-consider-some-radical-approaches-tackling-next
[3] Id.

1. Promoting Consumer Protection and Financial Literacy.

For over a hundred years, credit unions have promoted consumer protection by putting members' needs ahead of profits because we're nonprofit. Credit Unions consistently outperform banks in the American Customer Satisfaction Index.[4] It is true that consumer satisfaction is not consumer protection; however it is hard to believe that institutions that have a poor history of consumer protection would perform well in customer satisfaction.

The League and the League Foundation partner with CUNA to certify credit union employees on financial literacy so that our members can make the decisions that they think are in the best interest of their present and future financial needs.[5]

One of the strategies mentioned in the Strategic Plan, is collaboration with other federal regulatory agencies.[6] Indeed, with the CFPB having the rule making authority over so many consumer protection regulations this only makes sense. However, it is important to note that the rigidity of many of the rules harms credit unions, even if this is not the intent. Though the CFPB recognizes credit unions were not contributors to the financial crisis, the rules it dispenses make no distinction between good actors and bad, and though exemptions exist, policies are generally one size fits all.

In that vein, we hope that the NCUA will take on another role besides that of regulator and partner in credit union success, the role of credit union advocate. For the NCUA to advocate for the unique benefits that credit unions provide the American people and economy, especially in regards to their fellow regulators, specifically the CFPB. It is our hope that the NCUA will influence the CFPB to accommodate the beneficial qualities of credit unions in its zealous pursuit of consumer protection. One suggestion would be to ask the

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[4] American Customer Satisfaction Index, *ACSI Finance and Insurance Report 2015*, (2015).
[5] http://www.lscu.coop/foundation/financial-education-programs/
[6]NCUA, *NCUA 2017-2021 Draft Strategic Plan*, Jan. 21, 2016.
https://www.ncua.gov/About/Documents/Agenda%20Items/AG20160121Item2b.pdf

CFPB to put give more time to implementing rules, to phase in the rules gradually, alleviating the heavy, immediate burden implementation causes and allowing for more time to study the effects of the rule. The CFPB's record demonstrates a disregard for the risks posed by aggressive rule makings; consider the amendments of the TILA-RESPA rule.[7] Director Cordray conceded that even with a two year implementation, there were still issues, so that "early evaluations will be corrective and diagnostic, not punitive."[8] This doesn't seem very reassuring, especially considering that the responsibility for the rough rule implementation can be attributed to the CFPB.

Another example of the burdensome rulemaking of the CFPB is the recent HMDA rule. In its comment letter on the rule CUNA explained how the CFPB's data points far exceed those called for by the statute.[9] These two rules will certainly affect how credit unions operate their mortgage lending. This is significant both because mortgages are a huge part of credit union assets and because mortgages play such an important role in the economy.

LSCU recommends that the NCUA continue the great work it has overseen in recent years making the operating environment more manageable for credit unions and therefore, consumers. We hope that one method the NCUA will have of doing this will be to be clear advocate of credit unions in the working relationship it has with the CFPB. The NCUA has a unique opportunity as a fellow regulator and as a collector of data on credit unions to inject an awareness of the serious consequences that indiscriminate rulemaking can have on credit unions. Present rulemaking, along with the actions of lawmakers during the financial crisis have only exacerbated the trend of consolidation among banks and credit unions. The concern that institutions are "too

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[7] 2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z); Correction of Supplementary Information, 81 Federal Register 27, at 7032 (Feb. 10, 2016).
[8] Ben Lane, *CFPB to financial industry: Wake up and smell the coffee, we are not your enemy,* Housingwire, (Feb, 24 2016), http://www.housingwire.com/articles/36362-cfpb-to-financial-industry-wake-up-and-smell-the-coffee-we-are-not-your-enemy.
[9] Phil Hall, *CUNA Faults CFPB on HMDA Data Collection*, National Mortgage Professional Magazine (Jan. 11, 2016), http://nationalmortgageprofessional.com/news/57169/cuna-faults-cfpb-hmda-data-collection.

big to fail" has only become more exacerbated, not less. And though this trend may not solely be a result of regulation, it certainly bears much of the responsibility for it.

2. Delivering effective regulations

As discussed above, the NCUA has recently proposed much needed improvement in regulations. While the regulatory review process is never ending and circumstances will dictate new regulation as needed, it is important to put regulations in the context of their effect on the industry and consumers.

A recent study, commissioned by CUNA and performed by Cornerstone Advisors, Inc., calculated the real costs of regulation to the credit union industry.[10] The study focused on costs to the credit unions and revenues lost in maintaining regulatory compliance.[11] Some of the key findings were that the regulatory costs to credit unions were $6.1 billion, while credit unions lost $1.1 billion in revenue for a total regulatory cost of $7.2 billion in 2014.

According to the CEOs in the survey, nearly half of those costs would have directly benefited consumers with better rates and service options, had those regulatory burdens not existed.[12] Furthermore, the credit union "industry's efforts to be more efficient and productive has been significantly offset by the higher regulatory costs."[13] So whether the consumer is better protected with such regulations is something many consumers might take issue with. These figures are reinforced by analysis from a recent GAO report indicating a slight

[10] Vincent Hui, Ryan Myers, & Kaleb Seymour, *Regulatory Financial Impact Study: Report of Findings*, Cornerstone Advisors, Inc. (Feb 2016.)
[11] *Id.*
[12] *Id.* at 15.
[13] *Id.* at 14

reduction in available credit among credit unions and community banks[14] even as credit union expenses have decreased since 2010.[15]

Another important point the data reveals is that small and medium asset sized credit unions face a proportionally higher cost of regulatory compliance than large credit unions.[16] This may be an obvious consequence but it further explains the trends in credit union consolidation. One of the most significant findings of the report is what the respondents attributed the high cost of regulation to: Uncertainty and ambiguity around written rules, inconsistent application/interpretation of regulations by examiners, the constant flow of regulations, and the one size fits all approach to regulations.[17] The important fact to be taken from those respondents is that all of those issues can be rectified by regulators. Specifically, a more deliberative and slow pace for approving regulations, with rules that properly account for an institution's characteristics have the potential to dramatically reduce the burden of regulations to credit unions.

3. *Reliance on third party vendors.*

If the NCUA is concerned about credit unions' reliance on vendors, that reliance a direct consequence of increased regulation. The NCUA's knowledge of the unique manner of credit union operations compared to other financial institutions should support this. Many credit unions are small with few or no full time employees, let alone one devoted to compliance. Many of the recent regulations introduced by the CFPB require a great deal of time and energy to implement, so that even when a credit union has a staff capable of implementing the regulations, the cost to develop compliance programs is too high.

Therefore, it makes sense to use third party vendors who can utilize experts and the benefits of developing a system that can fit the needs of many subscribers. One difficulty this raises though is that credit unions have to

[14] U.S. Gov't Accountability Office, GAO-16-169, *Dodd-Frank, impacts on Community Banks, Credit Unions, and Systematically Important Institutions. (2015).*
[15] *Id.* at 44
[16] Hui et al., *supra* at 9.
[17] *Id.* at 16.

perform due diligence on those vendors who develop compliance products because ultimately the credit unions are liable, not the vendors, for non-compliance. The NCUA could alleviate some of this duplication by certifying vendors compliance products and giving a safe harbor for mistakes made by certified vendors so that credit unions could utilize products without having to duplicate the work in the spirit of due diligence.

4. *Legislative changes.*

NCUA could further our mutual goals of a healthy credit union system by supporting the legislation that would relieve credit unions of some of the regulatory burden. CUNA Chief Advocacy Officer Ryan Donovan mentioned a number of bills that could significantly improve the regulatory lot of credit unions.[18]

- Community Institution Mortgage Relief Act (H.R. 1529) would exempt mortgages made by institutions under $10 billion in assets and held in portfolio for three years from RESPA's escrow requirements and exempt mortgage servicers that service fewer than 20,000 mortgages annually from the requirements of Section 6 of RESPA.
- Mortgage Servicing Asset Capital Requirements Act (H.R. 1408 / S. 1910) would direct the Federal banking agencies to conduct a study of appropriate capital requirements for mortgage servicing assets for non-systemic banking institutions.
- Portfolio Lending and Mortgage Access Act (H.R. 1210) would deem residential mortgages held in portfolio by the original creditor as a "qualified mortgage."
- Mortgage Choice Act (H.R. 685) would improve the definitions of points and fees in connection with a mortgage transaction.

5. *Encourage the exchange of ideas.*

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[18] Ryan Donovan, *What Congress Can Do To Reform the CFPB*, CUToday.info (Feb. 22, 2016), http://www.cutoday.info/THE-tude/What-Congress-Can-Do-To-Reform-the-CFPB.

In the spirit of cooperation, one of the key ideals of the credit union movement, credit unions welcomes the exchange of ideas with the NCUA. Our destinies are intimately tied together and even when we don't agree on issues, the NCUA and the credit union industry have the same goals in mind: the prosperity of our institutions, members, businesses and communities.

Credit Unions are unique among financial institutions and have developed products to meet the needs of their members for over a hundred years. In a time when consumer behavior is rapidly evolving to technological change credit unions must evolve to address consumer expectation. So the NCUA and credit unions should work to anticipate the changes in the industry and perhaps propose new technologies in mobile banking. Reducing the unbanked population and high interest/payday/title loans are clear priorities for the CFPB, credit unions are the best institutions to tailor programs to the needs of local communities because we are the most community oriented financial institutions.

The CFPB has recently introduced a final policy statement on No-Action Letters (NAL).[19] The policy seeks to promote innovation with financial products by allowing institutions to submit proposals to the CFPB which, if approved, will state that the CFPB has no intention of taking any action regarding the product. This is targeted at those products heavily dependent on technology, but where regulation and law have yet to comment on.[20] Unfortunately, NALs are non-binding[21] and provide no wind down period post-notice of termination. Essentially, there seems to be little incentive to apply for a NAL, because at best an institution only gets a statement indicating that, at present, the CFPB doesn't plan on taking action against them. The CFPB letter does little to mitigate risk, so it will be interesting to see how many institutions will seek them out. The NCUA may seek to cooperate with the CFPB on these notices; the NAL rule specifically describes situations where the CFPB involves

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[19] CFPB, Policy on No-Action Letters, CFPB-2014-0025, (Feb. 28, 2016), http://files.consumerfinance.gov/f/201602_cfpb_no-action-letter-policy.pdf
[20] *Id.* at 7.
[21] *Id.*

the proprietary regulator when considering a NAL.[22] Perhaps the NCUA should consider developing a similar notice for credit unions. This would put the NCUA in control of a process that has the potential for much innovation because credit unions have a more localized market, where specifically tailored products have a better chance of success.

Conclusion

The next five years will be interesting time for credit unions. Will the economy improve after the sluggish post-recession recovery? Have we reached a threshold in technological development for financial products or will the pace of innovation continue to increase compounding challenges to the industry and regulators? How might these things affect the cyber-security threat to credit unions? These are only some of the concerns that the NCUA and credit unions will face in the next five years. These uncertainties, and the ever-present reality of credit union consolidation, are a golden opportunity for more cooperation between the NCUA and credit unions.

The NCUA is our regulator and partner in promoting the safe and sound operation of credit unions, but it should also be an advocate for the credit union system. Specifically, the NCUA can advocate policies that account for the unique circumstances that credit unions function in cooperation with the CFPB or in its role on the FFIEC. The next five years will see new challenges and opportunities that are best met with mutual cooperation and a shared vision between the NCUA and credit unions.

Sincerely,

Mike Lee
Director of Regulatory Advocacy
League of Southeastern Credit Unions

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[22] *Id.* at 8.