



Office of the Chairman

July 6, 2017

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

Dear Director Cordray:

RE: Credit Union Examination and Enforcement

I am writing today to thank you for your past willingness to listen to reasonable requests for adjustments to the Consumer Financial Protection Bureau's (CFPB) regulations, and to ask that you consider exempting federally insured credit unions (FICUs) from the examination and enforcement provisions of section 1025<sup>1</sup> of the Consumer Financial Protection Act of 2010 (CFPA).

As not-for-profit, consumer-owned and -controlled financial institutions, FICUs serve a unique, positive role for consumers in today's financial services marketplace. I believe that role can and should be distinguished from the role played by for-profit, investor-owned and -controlled financial institutions. Subjecting FICUs and their consumer/member owners to the dual examination—and, in the case of federally insured, state-chartered credit unions, triple examination—regime mandated under section 1025<sup>2</sup> of the CFPA imposes unnecessarily burdensome costs on FICUs, particularly given their positive, consumer-focused role.

Moreover, the direct impact of aggressive punitive fines—the primary method of enforcement available to the CFPB—on the consumer/member owners of not-for-profit FICUs is particularly inequitable when compared to the impact such fines have on investor-owned, for-profit financial institutions. I make this point not to imply that the protection of credit unions' consumer owners is unimportant, but rather to suggest that the imposition of aggressive punitive fines on the very FICU consumers the CFPB is tasked with protecting, “for the benefit of consumers,” is tantamount to imposing a “the beatings will continue until morale improves” approach to consumer protection enforcement. I believe there is a better way.

The NCUA is currently the primary examiner and enforcer of consumer financial protection laws for over 99 percent of FICUs.<sup>3</sup> If you were to exempt FICUs from section 1025<sup>4</sup> of the CFPA, it would allow the NCUA to act as the *primary* agency responsible for the examination and

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<sup>1</sup> 12 U.S.C. 1551 (Requiring, among other things, that the CFPB have exclusive examination and primary enforcement authority over FICUs with total assets of more than \$10,000,000,000.).

<sup>2</sup> *Id.*

<sup>3</sup> There are currently more than 5,700 FICUs operating in the U.S. Of those, only 6 currently have \$10 billion or more in assets.

<sup>4</sup> § 1551.

enforcement of consumer financial protection laws for only six additional FICUs. This small shift in burden to my agency would free up examination and enforcement resources for the CFPB to focus on larger investor-owned, for-profit financial services providers, while continuing to provide robust protections for FICU consumers.

The NCUA is dedicated to fighting for the interests and rights of the consumer/member owners of FICUs. The NCUA's Office of Consumer Financial Protection and Access coordinates and works closely with the CFPB, and receives and responds directly to the complaints of FICU members. As the prudential regulator of FICUs, the NCUA also possesses and is able to bring to bear a broader arsenal of enforcement tools than is available to the CFPB when dealing with problem credit unions. This broader arsenal allows the NCUA to take more targeted actions against FICUs to protect consumers and address consumer financial protection law violations. For example, under the Federal Credit Union Act, the NCUA has the authority to prohibit institution affiliated parties, thereby enabling us to take action directly against the source of a problem rather than imposing a large fine on the FICU that must ultimately be paid by the consumer owners of the FICU.<sup>5</sup> The prohibition of a problem FICU official is typically an enforcement tool of last resort, however, it is just one example of the types of equitable targeted approaches the NCUA can take to protect consumers and enforce consumer financial protection laws.

I believe the CFPB and the NCUA can and should work together to address the inherent unfairness that occurs when aggressive punitive fines are imposed on FICUs and their member owners, minimize unnecessary examination costs for FICUs, and protect consumers in a way that is fair while also maintaining a level playing field for all parties involved. The CFPB has the power to exempt FICUs from section 1025<sup>6</sup> based on its broad authority to grant such exemptions under section 1022(b)(3).<sup>7</sup> Under section 1022(b)(3)(A), the CFPB, "by regulation, may conditionally or unconditionally exempt any class of covered persons . . . from any provision of" the CFPA, "as the Bureau determines necessary or appropriate to carry out the purposes and objectives" of the CFPA.<sup>8</sup> Exempting FICUs from the provisions of section 1025 will not affect the CFPB's exclusive rulemaking authority over FISCUs for consumer financial law.<sup>9</sup> Moreover, by conditioning the exemption of FICUs on their being subject to the requirements of section 1026,<sup>10</sup> and the Bureau's having secondary enforcement authority, the CFPB can retain its authority to examine or take enforcement action against FICUs if it determines the NCUA is not adequately enforcing consumer financial protection laws.

In granting an exemption under section 1022(b)(3),<sup>11</sup> the CFPB is required to take into account three factors listed in section 1022(b)(3)(B).<sup>12</sup> Those factors are as follows:

1. The total assets of the class of covered persons;

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<sup>5</sup> See § 1786(g).

<sup>6</sup> § 1551.

<sup>7</sup> § 5512(b)(3).

<sup>8</sup> *Id.*

<sup>9</sup> See §§ 5512(b)(1) & (b)(4).

<sup>10</sup> § 5512.

<sup>11</sup> § 5512(b)(3).

<sup>12</sup> § 5512(b)(3)(B).

2. The volume of transactions involving consumer financial products or services in which the class of covered persons engages; and
3. 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.

After carefully considering each of these factors, I am still convinced that an exemption for FICUs from the CFPB's exclusive examination and primary enforcement authority under section 1025<sup>13</sup> of the CFPB is fair and equitable. First, the total assets of the six FICUs currently subject to the CFPB's exclusive examination and primary enforcement authority under section 1025 pale in comparison to the total assets of the other classes of depository institutions subject to examination and enforcement under section 1025. Accordingly, any concerns that the CFPB would lose a material portion (based on the total assets of the institutions regulated) of the financial services market that it directly examines and oversees by exempting FICUs from section 1025 should be easily addressed and dismissed as unfounded.

Second, while the volume of consumer financial transactions the six FICUs currently subject to section 1025<sup>14</sup> of the CFPB is material, the shared interests of those FICUs and the consumer owners/depositors engaged in those transactions also warrants consideration relative to that volume. Except possibly in the case of mutual savings banks, in no other circumstance that we are aware of, are the interests of the consumer owner/depositor as closely aligned with the interests of the financial institution as in the case of FICUs. Furthermore, under the proposed FICU exemption, the CFPB would retain its exclusive rulewriting authority, secondary examination authority, secondary enforcement authority, and could continue to demand information and reports relative to those consumer financial transactions effected. Accordingly, given the limited scope of the exemption requested, most transactions involving consumer financial products or services would not be affected in any material way.

Third, for the same reasons discussed in the paragraph above, exempting FICUs from the CFPB's exclusive examination and primary enforcement authority under section 1025<sup>15</sup> would not affect existing provisions of law that are applicable to the consumer financial products or services. Under the proposed exemption, all FICUs would continue to be subject to consumer financial protection laws and applicable CFPB regulations. Accordingly, given that this limited exemption would not change the effect of any consumer financial protection law applicable to transactions involving consumer financial products or services, I can see no basis for objections to the exemption based on this factor.

For all these reasons, I believe granting FICUs an exemption from section 1025 of the CFPB will help ensure that FICUs are treated fairly and equitably while also maintaining consumer protections and a level playing field for all parties involved. Thus, I respectfully request that our two agencies begin to work together as soon as possible to make this change.

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<sup>13</sup> § 1551.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

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In the unlikely case that you refuse, after reviewing all the compelling facts in this letter, to provide such an exemption for FICUs, then I would request that, at a minimum, the CFPB conduct all FICU examinations jointly with the NCUA going forward. Such a request is consistent with the express requirements of the CFPA. Section 1025(b)(2) requires that the CFPB coordinate its supervisory activities with the supervisory activities of the prudential regulators, including consultation regarding their respective schedules for examining FICUs with more than \$10 billion in assets and requirements regarding reports to be submitted by such institutions. Moreover, there are currently only six FICUs with more than \$10 billion in assets.<sup>16</sup> I do not believe it is too much to ask for our agencies to coordinate their examination schedules so as to ensure that our agencies' examinations are conducted simultaneously.

Thank you for taking the time to consider my request, and for your appreciation of the positive role of consumer/member owned credit unions in today's financial services marketplace. I look forward to hearing from you soon in our attempt to collaborate on this and other important issues of mutual interest. The NCUA will continue to execute its duties as prudential regulator to maintain the safety and soundness of the National Credit Union Share Insurance Fund while also ensuring compliance with all laws we are charged to enforce, including consumer financial protection laws.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Mark McWatters", with a long horizontal flourish extending to the right.

J. Mark McWatters  
Chairman

OGC/JHB

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<sup>16</sup> § 1551(b)(2).