



Office of the Chairman

August 23, 2017

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

Dear Director Cordray:

RE: Enforcement and Civil Money Penalties

I'm writing to thank you for the recent, highly instructive meeting between the General Counsels of our two agencies regarding the Consumer Financial Protection Bureau's examination and enforcement activities. The meeting greatly improved our understanding of the Bureau's views about credit unions and your views on the Bureau's responsibilities under the Dodd-Frank Act. Hopefully your staff also benefited from the views and experiences shared by my staff during the meeting.

One particular issue of note that was discussed during the meeting, which I believe warrants follow up, was what types of enforcement actions are most effective when taken against federally insured credit unions for violations of law. Because fines imposed on credit unions must be paid by the member-owners of the credit union, which ultimately takes money out of the community served by the credit union, the National Credit Union Administration makes sparing use of its civil money penalty authority. Instead, the NCUA has long favored using a number of alternative administrative actions that we have found to be equally or more effective in achieving our enforcement goals in a timely and consistent manner.

The NCUA's general goal as a regulator is not to take money away from credit unions and their member-owners, but to instead work with federally insured credit unions to facilitate their safe and sound operation and to ensure they fully comply with applicable laws. We strive to detect and resolve problems in credit unions before they become insurmountable because, when a credit union fails, the credit union's member-owners and the surrounding community suffer from the loss of the financial services the credit union provides. Of course, the NCUA takes credit unions' compliance with legal requirements seriously, and, when necessary, we take various administrative actions to compel them to correct violations of law.

As stated above, the NCUA favors using alternative administrative actions instead of civil money penalties to require, when necessary, a credit union to operate in a safe and sound manner and to comply fully with all applicable statutory and regulatory requirements. Alternative administrative actions typically taken by us include: *informal actions* such as documents of resolution, regional director letters, unpublished letters of understanding and agreement, and preliminary warning letters; and *formal actions* such as published letters of understanding and agreement, cease and desist orders, involuntary liquidation, conservatorship, removal,

prohibition, termination of insurance, and revocation of charter. Enclosed with this letter, is an internal Supervisory Letter to the NCUA's staff, which describes in detail many of the administrative remedies the NCUA has available.

Which particular administrative action or progression of actions we use depends on the facts and circumstances of the particular case. Based on our decades of experience, we have learned that the deft use of a regulatory scalpel is far more effective in achieving compliance than the blunt force of a regulatory hammer, which inevitably leads to collateral damage and unintended consequences.

While the NCUA prefers taking alternative administrative actions, the NCUA does impose civil money penalties on credit unions from time to time. The amounts of those penalties are small,¹ designed only to correct the immediate problem, and are usually assessed in response to a credit union's failure to submit Call Report or other required data to the NCUA in a timely manner.² In these limited circumstances, we have found that small civil money penalties are effective.³

Because of the not-for-profit, member-owned nature of credit unions, I don't believe the imposition of large civil money penalties against a federally insured credit union is ever likely to be warranted or particularly effective. In my opinion, a better way to address a violation of the law or a problem is through the use of alternative administrative actions that do not unnecessarily strip money away from the credit union, its member-owners, and the community it serves. I urge you to consider our approach before imposing civil money penalties against federally insured credit unions in the future.

Thank you again for your willingness to listen and consider the NCUA's perspective regarding the treatment of federally insured credit unions. I look forward to continuing our discourse on these and other important issues in the future.

Sincerely,



J. Mark McWatters
Chairman

Enclosure

¹ In the fourth quarter of 2016, individual civil money penalties ranged from \$151 to \$2,509. The median penalty was \$253.

² The assessment of penalties primarily rests on three factors: the credit union's asset size, its recent Call Report filing history and the length of the filing delay.

³ For example, for the third-quarter 2013 reporting cycle—the reporting period immediately before the NCUA began issuing civil money penalties for late Call Report filings—more than 1,000 federally insured credit unions filed their Call Reports after the deadline had passed. Since then, late Call Report filings have dropped by more than 95 percent. Only 41 credit unions filed late call reports for the fourth quarter of 2016.