Consumer Financial
Protection Bureau

Taskforce on Federal Consumer Financial Law Listening Session

August 24, 2020
11:00am to 12:00pm Eastern

Participants: Taskforce and National Credit Union Administration (NCUA)

Taskforce Participants: Todd Zywicki – Taskforce Chair and Bill MacLeod – Taskforce member

Taskforce Staff and CFPB Participants: Cheryl Parker Rose – Assistant Director, Office of Intergovernmental Affairs, Nat Weber – Staff Director, Ashlie Tarpley – Taskforce Senior Counsel, Jeff Magliato – Taskforce Paralegal

NCUA Participants: Matt Biliouris - Director, Office of Consumer Financial Protection and Joe Goldberg –Director, Division of Consumer Compliance Policy and Outreach

Readout: On Monday August 24, 2020, Taskforce Chair, Todd Zywicki, and Bill MacLeod, Taskforce member, met remotely via WebEx with Matt Biliouris and Joe Goldberg of the NCUA as part of the Taskforce's commitment to engage with external stakeholders to gain insights regarding the financial service industry and financial consumer protection laws. The group discussed opportunities to improve, strengthen, and modernize consumer financial protection laws.

Introductions:

Nat weber introduced the participants from the Bureau and thanked Cheryl Parker-Rose for arranging the call. He then noted the call would center on the information presented in the discussion prompts circulated prior to the call.

Matt Biliouris stated that he is the Director of the Office of Consumer Protection at the NCUA. The office started around 2009 or 2010 after the financial crisis to focus on consumer financial protection. Previously, duties related to consumer financial protection were dispersed among different groups at the agency. Mike Fryzel, past NCUA Board Member, created the Office of Consumer Protection to improve consistency. Matt has been the Director for the office since 2013 and previously served as an examiner.

Joe Goldberg stated he is the Director of the Division of Consumer Compliance Policy and Outreach, one of two divisions that report to Matt. The Division covers policy aspects for agency on all types of consumer financial protection and compliance issues. The office also handles some fair lending issues. Joe has been with agency since February 2013. He also served in the Pennsylvania Attorney General's office where he worked on consumer protection issues and also headed its bureau of consumer protection.

Matt clarified that the other division that reports to him is the Division of Consumer Affairs, which handles all consumer complaints and oversees the agency's financial literacy and outreach program. He noted that this particular office has gone through several iterations and used to house field of membership issues.

Todd Zywicki introduced Bill MacLeod and noted his consumer protection background. Todd explained that the Taskforce is a five-member committee with operations that were independent of the Bureau by the Director's design. All of the members have significant government experience in addition to private sector experience.

Todd also mentioned that the Taskforce was drafting a two-volume report that will be delivered in January 2021 or before. He referenced the NCCF report and noted many things have changed in the 50 years since that report was published. The financial regulatory system has developed layered sediment over time. The Taskforce want to assess where we are, where we're going and how we get there. The Taskforce is interested in analyzing the existing successes and failures and create a modern framework to advance consumer welfare and consumer protection. The Taskforce is looking at five overarching themes:

1) consumer protection/promotion of consumer welfare (to include, e.g., consumer choice and access);
2) competition;
3) innovation;
4) inclusion; and
5) regulatory modernization.

As part of the exploration of the latter topic, the Taskforce is considering how the bureau works with other agencies, where we are with respect to consumer financial protections, and what the relationship is between state and federal regulators and the Bureau and other federal regulators.

Discussion:

Nat Weber asked the group whether there were areas in which existing consumer protection laws were inadequate or needed to be strengthened to ensure consumers are adequately protected.

Matt Biliouris noted that there's a need to make sure there are robust consumer protections in the mortgage arena especially considering practices in this space led to the financial crisis. He stated it is not enough to rely on a disclosure-based, consumer-beware consumer protection regime given the tactics employed by some bad actors. These tactics make it challenging to level the playing field for consumers. Additionally, Matt noted it is not enough to rely on the free market, provide consumers with disclosures and let them make their own decisions because there are predatory lenders and other unscrupulous tactics employed to take advantage of consumers. For example, certain products and practices trap consumers in negative financial cycles.

Joe Goldberg echoed Matt's sentiments and noted that mortgages, particularly, mortgage servicing, was an area where increased attention should be focused. Dodd-Frank Act rules and Bureau rules have helped in the origination process, but rules are lacking in the servicing area. Joe emphasized that there is also room for improvement in mortgage origination as Matt mentioned. Joe believed the Bureau should focus on the mortgage-servicing industry as the industry is fraught with perils for borrowers. Some of the need is for better enforcement because some existing rules are helpful. But it would also be beneficial to study what exactly is going on between consumers and nationwide servicers because some practices are causing a lot of harm. These issues could be dealt with via regulatory provisions. Joe also noted the Bureau has been involved that with addressing predatory lending practices in the country, and he hopes it continues to do so. The events of this summer have brought greater focus on the need for greater financial inclusion. Although he is not sure whether it is the province of the Bureau or the NCUA, he does not believe the Bureau and other regulators/prudentials should step back on where we are in terms of ensuring protections for all borrowers and trying to make progress on inclusion. But he noted he is not sure which regulator should handle these issues.

Matt also noted he is not sure which entity is in the best position to regulate these issues. He assessed that there is some unfairness in a system in which consumers in one state have more or less protections that those of another state. But stated he also believes in federalism and the right of consumers to make decisions about where they live based on the protections offered by a state. He emphasized that it was still unclear who gets to regulate consumer protection issues – i.e. whether it should be regulated on a state-by-state basis or whether it makes more sense to centralize these duties. It's too easy simply say federal regulators will do it and try to push the mandates down through state and other agencies.

Todd Zywicki noted that a trend over the last several years is the dramatic growth in non-bank lenders in the mortgage origination sphere. He asked the group what they are seeing with respect to mortgages by credit unions with respect to inclusion. Some evidence suggests a lot of credit unions and community banks have stopped offering certain products because of Dodd-Frank Act costs and risks. Mortgages have been on chopping block because of volume credit unions can originate versus the costs. Also, most credit unions are small and not covered by the Durbin amendment. But those in the industry say they have seen a reduction in interchange fees, for example, even those these institutions are not subject to this law. Todd asked if this was a concern of credit unions and how they have responded to the concern.

Matt stated he had heard anecdotal information about these issues. For example, some trade associations routinely discuss the potential for there to be a contraction in the market due to onerous requirements. The NCUA seeks tangible evidence of drawbacks when it issues proposals. Matt mentioned that some credit unions cannot compete in certain markets due to their size and scale. For example, there was a noticeable decline in HELOCS that could have been related to this issue, although unclear. Additionally, some credit unions stay below de minimus thresholds to avoid complying with certain laws.

With respect to financial literacy, Matt explained that the NCUA interprets language regarding the promotion of thrift in the Federal Credit Union Act (FCUA) as compelling inclusion, literacy and education initiatives. This interpretation supports the need for financial literacy program. Matt explained that it is not only about educating consumers but also proactively affording access to mainstream financial services.

Joe also noted the NCUA had received feedback that certain rules/changes may negatively impact credit unions because they will be forced to exit the market but could not obtain statistics reflecting this being a reality in a lot of areas. Some trade groups have also asked the NCUA to exempt credit unions from all Bureau regulation. Todd noted he had received similar feedback in relation to the Taskforce's work. Joe stated the problem with doing that is that it would create a two-tiered system, in which one group of consumers would be subject to a different set of protections than another set. While he is sensitive to the fact that small credit unions may have financial challenges to providing certain services, all consumers should have the benefit of the same necessary protections.

Matt mentioned that one of the ways the NCUA has addressed the potential negative effect of certain regulations on smaller credit unions is by requiring examiners to scope examinations. Joe developed a set of scoping requirements for examiners to determine what level of examination is appropriate given the size/type/other attributes of a credit union. On top of that, their office started required examiners to look at certain standard issues as well (e.g. MLA, Regulation E, ECOA). While the issue of whether to exempt certain credit unions from these examination requirements is discussed internally, the NCUA has determined that they are necessary to protect all consumers. There are some rights that every consumer should be afforded and it does not seem appropriate to remove requirements. Some of the fair lending issues the NCUA has uncovered has been at smaller financial institutions. This allows the agency to cite the issue, work with the institution to correct the issue and put processes in place to make sure it doesn't happen again.

Todd observed that there are a relatively small number of credit unions that are large enough to be subject to bureau supervision and asked for the group's general reflections on situations where both the Bureau and NCUA are supervising for consumer protection issues. How does this work? Is it working well? Are there things that might cause it to work better?

Matt noted individuals in the ONES program could answer this question better. The program is run by Scott Hunt. Once a credit union passes the $10 billion asset threshold, the institution moves to Scott's supervision for safety/soundness from a prudential perspective and moves to Bureau supervision at the same time. When the Bureau was first established, there were conversations between the NCUA and the Bureau regarding how to best allocate resources. Today, there is a good level of communication between Bureau and the ONES office. The bureau and ONES discuss consumer compliance and whether certain issues should affect a credit union's CAMEL rating. However, the speed and veracity at which things are happening is out of NCUA's control to an extent. The NCUA does not get as much time as it would like to vet and review matters in cooperation with Bureau. Consultation regarding rulemaking, for example, is more challenging given the time afforded to comment on something and provide tangible feedback. This is a two-way street. The interagency coordination/joint guidance process has better control.

Joe echoed Matt's sentiments and noted that there are times when the NCUA is not given a meaningful opportunity to fully vet a proposal and provide beneficial feedback.

Matt mentioned that his office has been looking at whether there's a way to better align resources as a credit union is transitioning to Bureau supervision. The idea on the table is completing health checks two or three exams before an institution transitions so the agency can highlight potential Bureau issues and the credit union can better allocate resources to address these issues. Matt noted that approximately 9-11 institutions have transitioned to Bureau supervision since the Bureau came into existence. They have asked for an updated list of the institutions on the cusp of Bureau examination to develop a strategy.

Nat Weber asked if there are there specialized education efforts that NCUA does that could apply to the broader landscape?

Matt reiterated that disclosures alone are insufficient. The work regulators do collectively provides a good framework and national strategy. The agency tries not to duplicate other efforts but also wants to scale efforts to credit unions. For example, the agency tries to identify places where consumers may experience similar financial events (providing back-to-school resources, fraud scams during holidays, etc.). The agency uses examinations to identify schemes and then use initiatives to provide consumers with resources. Matt does not believe the agency's role is to protect consumers from themselves. But he does believe consumers should be provided with tools to make the best decisions they can. Educating consumers about their financial futures is not easy when the consumers are adults who do not have the benefit of financial forecasting and the like. It's also difficult to measure the success of financial literacy programs. The agency could look at credit scores and rates at which consumers would have qualified before and after programs, but these are not reliable indicators. At least half of credit unions are offering some kind of financial literacy program. It's something the agency has tried to incentivize rather than mandate. Some think it should be a requirement. From a fair market perspective, given credit unions have an aging membership population, it makes sense to target and shore up younger membership by educating them and making sure they have what they need to participate in the market.

Todd asks if the NCUA has developed an assessment to determine what financial literacy/education strategies work/don't work and whether the agency makes changes to account for these findings.

In Matt's estimation, small-oriented programs, workshops, providing examples, and reinforcement, probably works best. Education that comes off as too preachy or requiring a consumer to jump through an educational hurdle before acquiring a product may not work as well. He noted that this financial literacy issue is illustrated in the payday lending dilemma. What is an institution to do if it knows a consumer will walk out of the door and go to a payday lender if the institution denies a loan?

Joe acknowledged that it is very difficult to figure out what financial literacy strategies work on a broad basis. Some strategies work better for some people.

With respect to disclosures, Joe noted the Bureau should increase its focus on online/electronic disclosures given they seem to be structured in a way that encourages consumers not to read them. The disclosed information is then used as a defense when a dispute arises. Matt echoed Joe's sentiment and noted the Bureau should study the issue to not only determine what language is fair but also what language should be included.

Bill MacLeod asked how things have changed over the last 10 years from a competition perspective. He referenced trends he identified in the NCUA stats, e.g. the number of federally insured credit unions has dropped since 2011; total assets have dropped but members have gone up; and return on average assets has gone down. Based on the stats, he noted there appears to be a lot of economic volatility going on in the sector and asked the group for any general observations they had about the vitality of sector.

Matt was aware of the data Bill mentioned. Around 2007, the agency was looking at safety/soundness and noted that the incomes for credit unions would have been a loss if they hadn't taken into account C income. Shrinking of margins and small spread have something to do with this outcome. But also credit unions can be affected by regional and other economic issues. So, a number of factors contribute to this reality. It's also unclear what role innovation will play in these kinds of questions. For example, the Gramm-Leach-Bliley Act opened up mortgage services to non-bank industry that credit unions/community banks may not have been prepared for. Sometimes, the answer to credit unions who cannot compete from a technology perspective is to merge and partner with credit unions who can.

Bill asked why banking associations are so adamant about reigning in credit unions.

Matt explained that it comes down to is differences between charter types. Credit unions have certain benefits, e.g. no federal income tax, but these benefits come with downsides. For example, a credit union cannot raise capital through issuing stock and must generate earnings to raise capital. This dynamic shakes it up. Taking into account Joe's earlier comments regarding the need to provide consumers with certain across-the-board protections, Matt emphasized that it is important to make sure certain necessary protections are afforded to every consumer regardless which charter type their institution falls under.

Todd Zywicki asked if there were any changes to regulatory framework that would make it easier for credit unions to compete given the world is not as friendly to small, member owned credit unions these days.

Matt was not aware of a specific regulatory framework that might assist credit unions. He noted some have championed allowing all charter types to serve underserved areas; however, he believed this might benefit consumers rather than the institution. Currently, only 1 type of credit union, multiple common bond chartered credit unions, can serve underserved communities. He explained that there are differences between single common bond, multiple common bond and community charters. Under the FCUA, NCUA has broad discretion to craft rules to determine fields of membership. Banks have questioned the legality of the agency's creation of field of membership rules. A recent case, in 2016/2017, went to the supreme court which ruled in favor of credit unions. Matt cautioned that credit unions should be careful what they ask for. When credit unions wanted to be able to serve member business loans, congress allowed them to but then also instituted gap accounting requirements and limits on business loans to balance scale.

Nat asks if there are any general recommendations that the NCUA participants would like to share with us.

Matt said the agency has limited resources and has to determine how to allocate them in the best way. Through his actions, he tries to create a sound story to tell as a regulator regarding consumer protection and use the narrative as a guiding principle rather than creating regulation for regulation sake. Matt noted it is not an easy balance.

Bill mentioned that he would appreciate any studies/other pieces of research that they have been done to understand the credit union industry better. Matt pointed the Taskforce to the treasury's study of the credit union exemption for additional background.

Todd thanked the group and ended the call.