



Taskforce on Federal Consumer Financial Law Listening Session

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

Organization: National Credit Union Administration (NCUA)

CFPB Participants: Todd Zywicki, Bill MacLeod, Nat Weber, Ashlie Tarpley, Jeff Magliato, and Cheryl Parker-Rose

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

Purpose: On Monday August 24, 2020, Taskforce Chair, Todd Zywicki, and Taskforce Member, Bill MacLeod 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.

Discussion:

1) Introductions

- a) 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.
- b) 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.
- c) 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 office has gone through several iterations and formerly housed the membership office.

2) Legal framework of consumer protection (see discussion prompts).

- a) There are robust consumer protections in the mortgage arena especially considering practices in this space that led to the financial crisis. 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.
- b) Dodd-Frank Act rules and Bureau rules have helped in the origination process, but rules are lacking in the servicing area. 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. The Bureau has been involved with addressing predatory lending practices in the country and should continue to do so.
- c) The events of this summer have brought greater focus on the need for greater financial inclusion. Uncertain whether it is the province of the Bureau or the NCUA, 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.
- d) Another topic of uncertainty is which entity is in the best position to regulate consumer protections, especially with respect to inclusion. There is some unfairness in a system in which consumers in one state have more or less protections than those of another state, but in federalism consumers have the right to make decisions about where they live based on the protections offered by any given state. Nonetheless it is 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.

3) Is NCUA seeing any changes to offerings with respect to mortgages by credit unions (enough to reduce inclusion rates)? This could be due to trends with the growth of non-bank lenders in the mortgage original space impacting credit unions or possibly some credit unions and community banks have stopped offering certain products because of Dodd-Frank Act costs and risks. Most credit unions are small and not covered by the Durbin amendment, but some in the industry say they have seen a reduction in interchange fees; even those select institutions that are not subject to this law. Is this a concern of credit unions and how they have responded? (This is a follow-on question not included in the discussion prompts.)

- a) Anecdotally, yes. 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. 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 the minimum thresholds to avoid complying with certain laws.
- b) NCUA had received feedback that certain rules/changes may negatively impact credit unions because they will be forced to exit the market (once again, this is anecdotal, and

no one had statistics reflecting this being a reality). Some trade groups have also asked the NCUA to exempt credit unions from all Bureau regulation. 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 all are 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.

- c) 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 appropriately. NCUA 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 requiring 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.

4) On information and education (see discussion prompts).

- a) 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. It is not only about educating consumers but also proactively affording access to mainstream financial services.
- b) The agency tries not to duplicate other education efforts but wants to scale efforts at 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. The goal is not to protect consumers from themselves, but to provide consumer with tools to make the best decisions they can.
- c) 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.
- d) 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. What is an institution to do if it knows a consumer will walk out of the door and go to another financial service provider who will offer a competing product if the institution denies a loan?
- e) With respect to disclosures, the Bureau should increase its focus on online/electronic disclosures given they seem to be structured in a way that encourages consumers not to

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Pre-decisional

read them. The disclosed information is then used as a defense when a dispute arises. The Bureau should study the issue to not only determine what language is fair but also what language should be included.

5) On interagency coordination and cooperation (*not included in the discussion prompts*).

- a) 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.
- b) 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.
- c) There are potentially better ways to align resources as a credit union is transitioning to Bureau supervision. The idea on the table is to jointly complete 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. There have been approximately 9-11 institutions have transitioned to Bureau supervision since the Bureau came into existence. An updated list of institutions on the cusp of Bureau examination can be provided.

6) On Competition (*see discussion prompts*)

- a) How things have changed for credit unions over the last 10 years from a competition perspective. It appears the number of federally insured credit unions has dropped since 2011; total assets have dropped; members have gone up; and return on average assets has gone down. Based on the stats, there appears to be a lot of economic volatility going on in the sector.
- b) Around 2007, NCUA 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.
- c) It's 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.
- d) Banking associations appear adamant in reigning in credit unions. One hypothesis as to why is 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. (Sidebar: this reinforces the need to provide consumers with certain across-the-board protections. It is important to make sure certain necessary

protections are afforded to every consumer regardless which charter type their institution falls under.)

- e) There are regulatory frameworks that could make it easier for credit unions to compete. Some credit unions have championed allowing all charter types to serve underserved areas; however, 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. 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. 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.

Potential recommendations:

- 1) 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 (REF: 2b)
- 2) Supervision and rules need to account for banks attempting to artificially stunting growth to remain below certain threshold limits on depository holding or opting to merge to help compensate for increased regulatory costs (REF: 3a)
- 3) 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 (REF: 4c).
- 4) The Bureau should study the electronic disclosures to determine what language is clear, "fair", and should be included (REF: 4e).
- 5) NCUA and the Bureau can jointly complete 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 (REF: 5c).
- 6) Allow all credit union charter types to serve underserved areas. Currently, only 1 type of credit union, multiple common bond-chartered credit unions, can serve underserved communities (REF 6e).

Potential Action Items:

- 1) Scott Hunt in the ONES program could answer how it works when both the Bureau and NCUA are supervising for consumer protection issues. He would have ideas on what is working well and what improvements could be made.
- 2) An updated list of institutions on the cusp of Bureau examination can be provided.