America's Credit Unions

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The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

RE: Increasing Regulatory Pressures on Credit Unions

Dear Director Chopra:

On behalf of America's Credit Unions, I am writing to the Consumer Financial Protection Bureau (CFPB or Bureau) to ensure you are aware of the regulatory challenges and pressures credit unions are currently facing. America's Credit Unions is the voice of consumers' best option for financial services: credit unions. We advocate for policies that allow the industry to effectively meet the needs of their nearly 140 million members nationwide.

Credit unions are experiencing an unprecedented battle on non-interest income. These challenges, stemming from the actions of both the CFPB and the National Credit Union Administration (NCUA or Agency), will result in a change to the credit union business model, making it more difficult and costly for these smaller, community-based institutions to continue serving their consumer-members across the country. If unnecessary regulation continues to make it more difficult for smaller financial institutions to operate, we will continue to see an increasing rate of consolidation, resulting in fewer banking options, less competition, and higher prices. We will also see the costs of basic financial services increase to compensate for the loss of non-interest income. This means no more free checking accounts, more expensive loan products, and less staff available for that individual support that is critical for so many credit union members. Unfortunately, overregulation and attacks on products that provide necessary income to financial institutions, such as mis-characterizing avoidable and clearly disclosed fees as "junk fees," are making it harder for credit unions to survive. It is not one single action that ultimately overburdens credit unions, but rather it is the tidal wave of regulations and restrictions that are ultimately crushing the industry.

In a recent survey, our members indicated that the cumulative impact of separate regulatory proposals on fee income will likely be significant. Rulemakings targeting overdraft programs, nonsufficient funds fees, interchange fees, and credit card late fees are projected, on average, to reduce the non-interest income of credit unions by 31 percent.[1] Regulators such as the CFPB have downplayed the magnitude of this potential decline in revenue by limiting the scope of economic assessments to individual rules, ignoring the broader regulatory landscape, and by

[1] America's Credit Unions, Member Survey on Non-interest Income (Apr. 2024).

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failing to consider market-level impacts on smaller, downstream entities who are not immune to arbitrary pricing dictates. As a consequence, the CFPB overlooks the degree of consumer harm that is likely to materialize as costs are passed onto credit union members. In response to cumulative regulatory actions targeting fees and interchange income, our members said they would likely take the following actions to mitigate a material decline in non-interest income:

Response	%
Increase loan rates	85%
Increase credit card rates	65%
Decrease share/savings rates	71%
Eliminate no-fee checking/savings programs	52%
Adopt higher minimum balance requirements for savings/checking accounts	35%
Reduce staff	31%

Recently Finalized and Proposed Rulemakings from the CFPB

The Bureau has recently proposed or finalized several regulations that would reduce credit union income while simultaneously increasing regulatory burdens and compliance costs, acting as a one-two punch to the operational realities of credit unions. Recent regulatory actions have targeted fee incomes, such as credit card late fees, nonsufficient funds (NSF) fees, and overdraft fees. The decreased fee income associated with these regulations—combined with increased regulatory burdens simultaneously implemented by the Bureau—have put significant pressure on the ability of credit unions to remain competitive and offer crucial programs and services to their members.

The CFPB's final rule on credit card late fees drastically reduces the allowable maximum late fee from $32 to $8 for larger card issuers and removes the allowance for these fees to adjust annually for inflation.[2] This will result in a significant decrease in fee revenue for financial institutions, both covered and exempt, which count on these fees as part of their non-interest income. The loss of these fees could impact the ability of credit unions to fund beneficial member services and maintain competitive lending rates.

The CFPB's proposed regulations on overdraft fees are similarly impactful. The new rule would limit the size of allowable fees to an amount that merely recovers the costs associated with providing the overdraft service.[3] Just as with the credit card late fees rule, the proposed overdraft rule ignores the realities of credit union operations. The proposed rule suggests a transition of overdraft services to a checking line of credit which presents a particularly impractical option for credit unions due to the statutory 18 percent interest rate ceiling mandated under the Federal

[2] Credit Card Penalty Fees (Regulation Z), 89 Fed. Reg. 19,128 (Mar. 15, 2024).
[3] Overdraft Lending: Very Large Financial Institutions, 89 Fed. Reg. 13,852 (Feb. 23, 2024).

Credit Union Act.[4] This cap, which limits the maximum interest rate credit unions can charge on loans and lines of credit, would significantly constrain credit unions' ability to offer such products to the consumers who were previously eligible for overdraft protection. The narrow margin imposed by the usury cap makes it economically unfeasible for credit unions to provide a checking line of credit as an alternative to traditional overdraft services, as the costs associated with offering and managing these lines of credit could surpass the interest revenue limited by the cap.

Although both rules related to fees will directly impact larger institutions, the downstream impacts of the rules will certainly hit all credit unions, and market and competition forces will result in a reduction of fee income, regardless of whether an entity is technically "exempt" from the rules. As the marketplace reacts to the constraints placed on larger entities, smaller credit unions will likely face intense pressure to lower their fees to remain competitive. This scenario is not merely hypothetical, but a likely outcome of the natural market dynamics that drive pricing strategies across the financial services sector. Smaller institutions, many of which operate on thinner margins than their larger counterparts, rely in part on fee income, including overdraft and credit card late fees, to sustain their operations and fund essential services for their members. The forced reduction of these fees, in a bid to remain competitive, could severely impact their financial viability, undermining their ability to provide affordable, accessible financial services to underserved communities. Additionally, for institutions that are unable to reduce their fees, the wholesale discontinuation of certain programs may be the only reasonable business decision.

Furthermore, the indirect pressure that these rules would introduce will exacerbate the disparities between large and small financial institutions, potentially accelerating market consolidation as smaller entities struggle to compete. This consolidation is antithetical to the objectives of financial inclusion and diversity that the CFPB and other financial regulators as well as regulated financial institutions are all striving toward, as it reduces consumer choice and may lead to underserved areas becoming even more financially marginalized. It is important to note that credit union fee income is at its lowest point in 32 years, making credit union services more affordable than ever. Members can now enjoy a full-service checking account with minimal costs. This affordability is partly due to specific service fees, such as late fees and overdraft protection/courtesy pay, which allow members to pay for the services they use. Eliminating or significantly reducing these service fees would shift the financial burden from the users of these services to the entire membership.

[4] 12 U.S.C. § 1757(5)(A)(vi).

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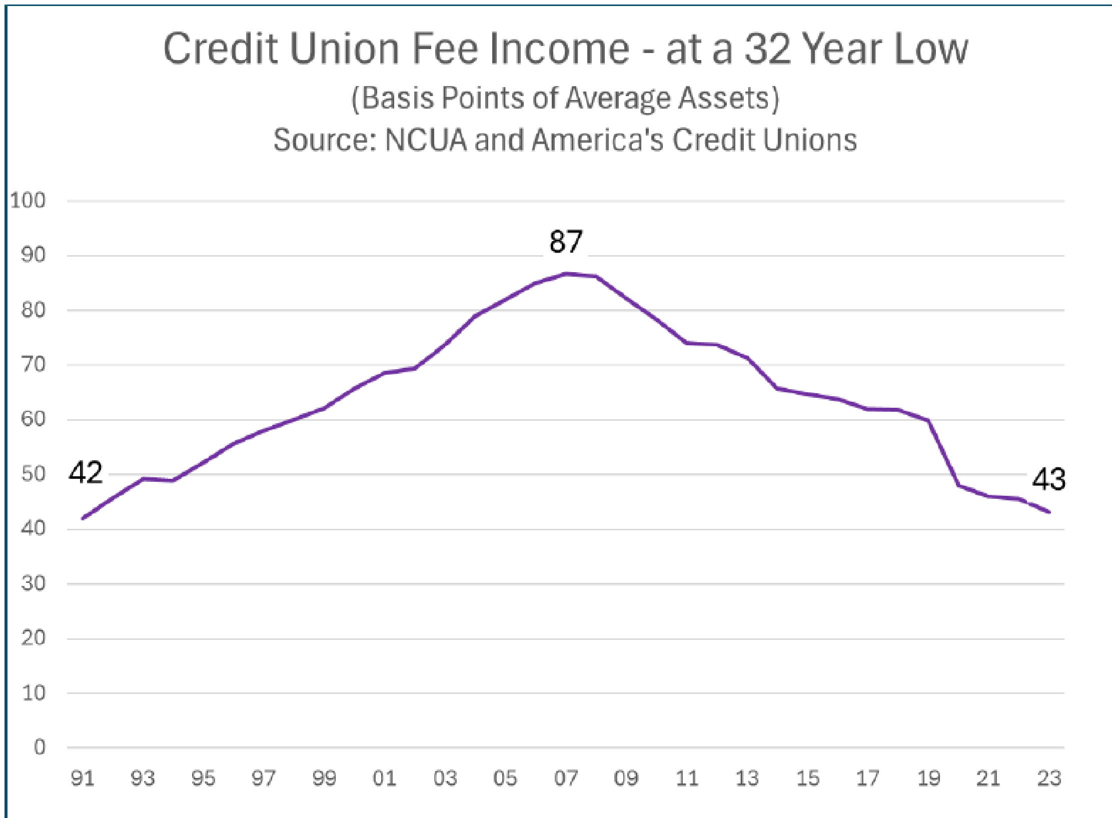

In addition, initiatives like the Bureau's proposed rule implementing Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection (Dodd-Frank) Act are set to significantly heighten costs and compliance burdens for financial institutions, with potentially severe consequences.[5] This rule mandates that institutions gather and report data on credit applications from small businesses, particularly those owned by women or minorities. The adjustments required for system enhancements and staff training to manage this new data collection and reporting could be financially onerous. Furthermore, these increased expenses, in tandem with diminished income resulting from the CFPB's regulations on overdraft and credit card late fees, could be particularly damaging for credit unions. These combined pressures may severely impact their operational viability and competitive stance in the financial sector, potentially destabilizing these smaller, community-focused institutions.

Finally, America's Credit Unions supports consumers' rights to access and control their personal financial data, but credit unions have a responsibility to ensure credit union members' data remains safe, secure, and private. As proposed, the CFPB's rule implementing section 1033 of the Dodd-Frank Act will have the unintended consequence of making credit union services less available and more expensive to those who need them the most.

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[5] Small Business Lending Under the Equal Credit Opportunity Act (Regulation B), 88 Fed. Reg. 35,150 (May 31, 2023).

The CFPB's proposal goes far beyond any reasonable interpretation of section 1033 of the Dodd-Frank Act and imposes substantial costs on credit unions in their capacity as data providers. Numerous technical requirements for API interfaces along with a directive that credit union data providers subsidize third party access to member data will result in an uneven playing field that penalizes credit unions. Unfortunately, the CFPB did not appear to consider the concerns raised about these facts by the small financial institutions during the Small Business Regulatory Enforcement Fairness Act (SBREFA) process,[6] or those raised by the Small Business Administration's (SBA) Office of Advocacy.[7]

While the Dodd-Frank Act calls upon the CFPB to promote fair and competitive markets, the plain language of section 1033 does not reflect an intention to reengineer data sharing mechanisms to alter financial sector competition. Furthermore, the commoditization of financial data driven by the CFPB's idealistic vision for open banking could result in the opposite of its intended effect: rewarding the largest, most technologically sophisticated companies at the expense of credit unions and other community institutions focused on relationship banking.

Impact of CFPB Rulemakings on Credit Union Operations

When federal banking regulators estimate the impact of rules aimed at limiting fee income, they often do so within a vacuum and without concern for how the broader regulatory landscape can influence credit union costs. For example, the minimal Regulatory Flexibility Act (RFA) analysis performed by the CFPB in conjunction with recent rulemakings targeting fees does not consider the totality of regulatory burden associated with separate fee-related rules poised to take effect at or around the same time.[8] Even for rules that ostensibly target only larger financial institutions, federal agencies often ignore the downward pressure placed on market prices by the largest institutions who control a disproportionate share of payments volume.[9] The omission of cumulative regulatory impact in RFA assessments is a serious flaw, and one that could undermine the safety and soundness of credit unions, particularly when reduced non-interest income results in increased interest rate sensitivity.

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[6] *See* CUNA's Response (Jan. 25, 2023), https://news.cuna.org/ext/resources/CUNA%20News/Daily/2023/-01-2023/0125231033-SBREFA-Outline-Response_280283504.pdf. NAFCU's Response (Jan. 25, 2023), https://www.nafcu.org/system/files/files/1.25.23%20Letter%20to%20CFPB%20re%20Outline%20of%20Proposals%20for%20Required%20Rulemaking%20on%20Personal%20Financial%20Data%20Rights_0.pdf.

[7] *See* SBA Office of Advocacy Letter to CFPB (Dec. 21, 2023), https://advocacy.sba.gov/2023/12/21/advocacy-submits-comments-on-cfpbs-nprm-on-personal-financial-data-rights.

[8] *See e.g.*, CFPB, Overdraft Lending: Very Large Financial Institutions, 89 Fed. Reg. 13852, 13896 (Feb. 23, 2024) (proposed effective date of at least six months after publication of a final rule in the Federal Register); CFPB, Fees for Instantaneously Declined Transactions, 89 Fed. Reg. 6031, 6050 (Jan. 31, 2024) (proposed effective date of 30 days after publication of a final rule in the Federal Register); CFPB, Credit Card Penalty Fees (Regulation Z), 89 Fed. Reg. 19128, 19202 (March 15, 2024) (effective date of May 24, 2024).

[9] *See* America's Credit Unions, Letter to Board of Governors of the Federal Reserve System re: Debit Card Interchange Fees and Routing, 5 (May 10, 2024), https://www.americascreditunions.org/wp-content/uploads/2024/05/Docket-No.-R-1818-ACU-Letter-to-Boad-of-Governors-of-Federal-Reserve-Debit-Interchange-5.10.24.pdf.

While credit unions would prefer to avoid a scenario that necessitates any of these actions, the industry's capacity to absorb regulatory constraints on non-interest income is finite. Ultimately, the member-owners of credit unions bear the cost of heavy-handed regulation. However, the threat of current regulatory proposals goes beyond just undermining access to affordable banking products and services. Credit unions might also incur greater safety and soundness risks. Even after taking the mitigating actions discussed above to offset a decline in noninterest income, our members estimate, on average, that their interest rate sensitivity would increase either significantly (23 percent) or moderately (46 percent) in response to cumulative regulatory action targeting sources of fee income. Greater interest rate sensitivity could force smaller credit unions to seek greater scale, which could, in turn, result in accelerated industry consolidation.

Notably, none of the agencies that have proposed arbitrary limits on fees have expressed concern for the ongoing consolidation of the credit union industry, which has shrunk from 7,806 federally insured credit unions at the end of 2010 to just 4,604 at the end of 2023. How the cumulative impact of rules and regulations might bear upon the rate of credit union consolidation is a question often met with indifference, despite this concern being raised by our members every year. While the federal banking regulators may not feel any sense of obligation to the institutions they supervise, they do owe a responsibility to the public to consider how their rules and policy agendas will impact the availability of affordable banking services for consumers.

Conclusion

To best protect the credit union system and consumers, the CFPB must take a holistic assessment of regulatory burden and what it means for credit unions continued ability to serve their members. Should you have any questions or require any additional information, please do not hesitate to contact me at chunt@americascreditunions.org or 703-581-4254.

Sincerely,

Carrie R. Hunt
Chief Advocacy Officer