Carrie Hunt
Chief Advocacy Officer
608-231-4014
chunt@americascreditunions.org

May 16, 2024

The Honorable Todd M. Harper
Chairman
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: Increasing Regulatory Pressures on Credit Unions

Dear Chairman Harper:

On behalf of America's Credit Unions, I am writing to the National Credit Union Administration (NCUA or Agency) 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 NCUA and the Consumer Financial Protection Bureau (CFPB or Bureau), 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).

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%

Regulatory Burden Associated with NCUA Activity

The credit union industry continues to be extremely concerned with the recent revisions to the NCUA's Call Report requiring credit unions above $1 billion in assets to report revenue from overdraft and nonsufficient funds (NSF) fees.[2] In addition to the direct impact of these changes in terms of compliance, the broader implications are significant, as stressed in a series of recent letters we sent to the NCUA.[3] The bottom line is that this indirect regulation of overdraft and NSF fees will ultimately result in reduced non-interest income. While reduction of such income for a public bank may mean less earnings for shareholders, for a credit union it means a reduction in funds to keep the lights on, which means fewer staff to keep up with regulatory compliance and ultimately serve members.

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.

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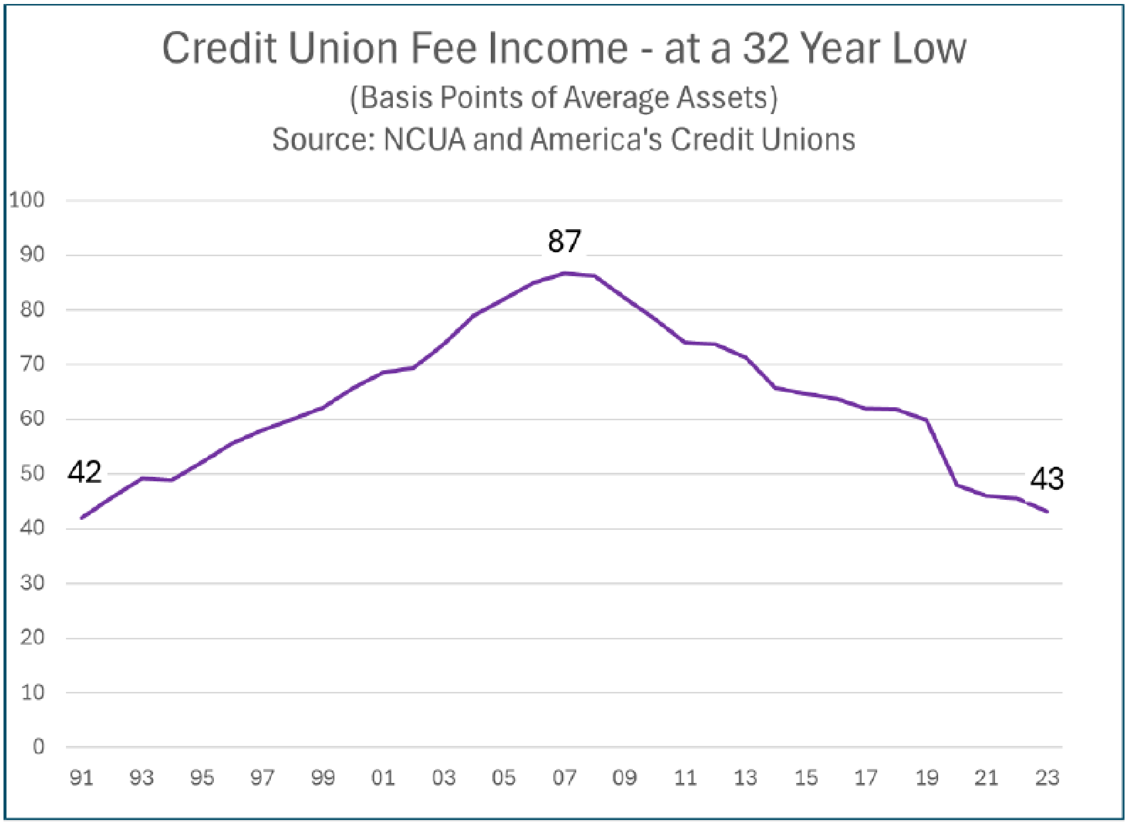
[2] 88 Fed. Reg. 85,327 (Dec. 7, 2023).

[3] Letter to NCUA: Transparency Regarding Call Report Changes (Feb. 28, 2024), https://www.americascreditunions.org/wp-content/uploads/2024/02/ACU-Letter-to-NCUA-Call-Report-Changes-2.28.2024.pdf; Letter to NCUA: Request for Legal Opinion Letter and to Refrain from Public Disclosure of Overdraft and Non-Sufficient Funds Fee Data (Mar. 21, 2024), https://www.americascreditunions.org/wp-content/uploads/2024/04/Letter-Requesting-LoL-and-Nondisclosure-of-Call-Report-Data-re-OD-and-NSF-Fees.pdf; and Letter to NCUA: Request for Nondisclosure of Overdraft and Non-Sufficient Funds Fee Data (Apr. 19, 2024), https://www.americascreditunions.org/wp-content/uploads/2024/04/Letter-to-NCUA-Board-Nondisclosure-of-Call-Report-Data-4.19.2024.pdf.



Further, year-over-year, the NCUA's budget continues to steadily increase. The NCUA justifies such increases as necessary to pay the salaries of more and more staff at the agency. Given that credit unions fund the NCUA, similar to a reduction in non-interest income, an increase in the agency's budget effectively means a reduction in credit unions' resources and an increase in pressure to comply with regulatory requirements. This ultimately makes it more difficult for credit unions to serve their members.

For example, the 2024 budget is an increase of seven percent over 2023, and the 2025 budget is tentatively set to include a 12.3 percent increase over 2024. Continuing on this trajectory of substantially increased budgets is unsustainable and will have serious consequences for the credit unions that fund the NCUA. These increases are occurring at a time when the number of credit unions continues to shrink and will only serve to hasten consolidation. We urge the NCUA to restrain its spending going forward and look for cost savings wherever possible.[4]

[4] *See generally* NAFCU Comment Letter to NCUA re 2024-2025 Budget (Nov. 21, 2023), https://www.nafcu.org/system/files/files/11.21.2023%20Letter%20to%20NCUA%20re%202024-2025%20Proposed%20Budget.pdf; CUNA Comment Letter to NCUA re 2024-2025 Budget (Nov. 21, 2023), https://news.cuna.org/ext/resources/CUNA%20News/Daily/2023/11-2023/CL---NCUA---Staff-Draft-2024-2025-Budget-Justification_final.pdf.

Impact of 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.[5] 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.[6] 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.

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.

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[5] *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).

[6] *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.

Conclusion

To best protect the credit union system and consumers, the NCUA 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

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Chief Advocacy Officer