



REGULATION & LEGISLATION

John J. McKechnie

NCUA Ratchets Up Its Focus on Mortgage Oversight, Regulation



By John J. McKechnie

The Covid-19 pandemic had wide-ranging effects on the economy, and federal financial regulators—including the National Credit Union Administration—adjusted their supervisory activities accordingly in an effort to help their industries get through the crisis.

While direct funding and temporary protections for renters and homeowners garnered headlines, other nuts-and-bolts actions by NCUA have had tangible impacts on how mortgage lending credit unions continue to navigate the still-troubled waters.

Add to that the changed leadership at NCUA, from Republican Chairman Rodney Hood to Democratic Chairman Todd Harper, and credit unions are faced with new regulatory priorities that are worth careful assessment.

FAIR LENDING

One issue that has received increased attention is Fair Lending. NCUA oversight of this important regulation became more of a supervisory priority in 2020.

The federal agency conducted a Fair Lending and Consumer Compliance Regulatory Update webinar in November that served to reinforce the NCUA commitment to expanded availability of mortgage credit.

During the session NCUA said Fair Lending compliance was “an essential part of the protection of consumers in the most diverse and often un-

derserved communities. Often those consumers require special protection from predatory lending practices, and NCUA must not only recognize that, but act upon it,” said then-Chairman Rodney Hood.

NCUA staff discussed how loan modifications, credit reporting and fair lending policies and procedures would receive additional scrutiny by examiners in 2021.

Making good on that promise, NCUA staff from the Office of Consumer Protection has since noted that “in past years, we would routinely conduct between 20-30 Fair Lending exams. Now that number has at least doubled ... and may continue to increase.”

NCUA also is instructing examiners to explicitly link HMDA data findings to fair lending oversight, especially in larger credit unions with more expansive mortgage lending portfolios

CONSUMER PROTECTION

In this and other areas, Harper, after assuming the chairmanship in January, has committed to ratcheting up NCUA’s consumer protection activities.

Data privacy, which for NCUA means increased ability of consumers to protect and secure their personal financial information, has become a centerpiece of the examination process.

Harper told a May congressional hearing that “maintaining the privacy of member data is one of the cornerstones upon which trust in the credit union system is based. Furthermore, misuse or unauthorized disclosure of confidential data, particularly data related to lending, may expose a credit union to litigation by a member and regulatory sanction by NCUA.”

NCUA has set forth enhanced data security and cybersecurity expectations regarding the privacy of mem-

ber information in examination materials. These are designed to ensure that credit union privacy policies and standards comply with applicable laws and regulations, particularly mortgage lending information-sharing requirements established by the Gramm-Leach Bliley Act.

Electronic mortgage disclosure requirements and privacy policies are also receiving renewed emphasis in credit union exams.

CUSO REGULATION

Not all of the increased attention to mortgage lending has been on the supervisory side at NCUA. A regulation that could significantly alter the way that credit unions participate in all types of lending is currently under consideration in the form of a rewritten Credit Union Service Organization (CUSO) rule.

In December 2020, NCUA issued a proposed CUSO rule for comment. Both Hood and board member Kyle Hauptmann spoke of a need for CUSOs to remain up-to-date with market practices, particularly in the area of consumer lending.

Specific to mortgage lending, the proposed rule would allow CUSOs to originate any type of mortgage loan currently done by a federally insured credit union. The rule could enable smaller and mid-sized credit unions to better facilitate their mortgage lending business. By utilizing a CUSO, a credit union would reduce administrative costs and improve pricing, without negatively affecting an existing common bond.

The proposed regulation has generated its share of controversy. First, Harper, who was then a board mem-

ber, would not support the regulation as proposed. He said it posed a safety-and-soundness problem, as well as a consumer-protection problem.

Third-party vendor authority oversight has been an additional point of discussion. Harper expressed concerns over lack of regulatory visibility or oversight of the CUSO.

While the proposed rule was put out for comment by a 2-1 vote (with Harper opposed), Harper in his role as Chairman has not put the item on the NCUA Board agenda for finalization.

Predictably, the bank lobby has been stridently opposed to any modernization of the CUSO regime, and was able to persuade NCUA to extend the original 30-day comment period, presumably as a delaying tactic. It is unclear when, if ever, the proposed CUSO rule will be approved by the NCUA Board.

MORTGAGE LENDING FOCUS

Because of its ever-increasing prominence on credit union balance sheets, mortgage lending is certain to receive significant attention from NCUA.

As a senior NCUA risk evaluation specialist said, “given the complexities of the marketplace, the sheer size and risks of most portfolios, and the agency’s experience with the (2008-09) market crisis, you better believe we are looking more closely at mortgage lending than ever.”

“Because of its ever-increasing prominence on credit union balance sheets, mortgage lending is certain to receive significant attention from NCUA.”

“NCUA is instructing examiners to explicitly link HMDA data findings to fair lending oversight, especially in larger credit unions with more expansive mortgage lending portfolios.”

John J. McKechnie is a partner at Total Spectrum, a Washington, D.C.-based team of companies providing strategic counsel and effective plan implementation using advocacy, research, communications and political engagement. You can reach him at (202) 544-9601 or jmckechnie@totalspectrumsga.com.