February 22, 2018

RE: Proposed 1st Amendment of Regulation 187 (11 NYCRR 224)

Maria T. Vullo, Superintendent of Financial Services
New York State Department of Financial Services
One State Street
New York, NY 10004-1511

Dear Superintendent Vullo:

As the President of the New York Credit Union Association, I am writing this letter to underscore the unique and pernicious impact that this proposed regulation would have on the ability of credit unions to help our members.[i] Currently, 241 credit unions offer credit life insurance in New York, paying out average claims of $8,000, with an aggregate of more than $12 million in credit life claims paid in 2017. The Association has been advocating on behalf of state and federal credit unions for more than 100 years and, for much of that time, the provision of credit life insurance, which pays off a specific debt in the event that a member dies, has played an important part in the credit union movement. While we share the Department's commitment to ensuring that consumers get the insurance products that best meet their needs, this proposal, as currently drafted, would actually make it more difficult for credit unions to provide cost-effective insurance products to their members.

The Debt Shall Die With the Debtor

Credit unions are member owned, not-for-profit cooperatives which have, as one of their core missions, helping persons of modest means gain access to cost-effective financial products which help them build and maintain a stable financial future. This proposal is predicated on a belief that the existing regulatory framework harms consumers by enticing them to buy insurance products they do not need. But the experience of credit unions demonstrates that properly administered credit life policies and similar products have and can continue to play a key part of helping consumers guard against unforeseen events and help consumers of all economic classes climb the economic ladder. Credit unions look out for their members and simply put, debt forgiveness products have always been a crucial component of the credit union mission. [ii]

Credit insurance is a risk management tool for many credit union members, which fits into the credit union's philosophy of serving their members. As a form of term life insurance, a credit life policy pays the balance of the owed debt if the borrower dies, thereby leaving co-signors or survivors free of the debt. As opposed to traditional term life products, credit scores are not used in underwriting, and a medical questionnaire is generally not used. It is available to all members at the same rate regardless of sex, age, weight, smoking status, occupation, or high risk activities on a “take it or leave it basis.” Credit life is typically cheaper than term life when compared at the same amount of coverage and is often offered at lower denominations.

Crucially, the credit union industry has not historically offered these products to exploit members, but rather to protect them against the devastating financial impacts of unforeseen emergencies. When credit life policies were originally offered to members in the first decades of the twentieth century, members often had to pay the entire premium. The industry grew concerned that making members pay for a policy’s entire cost placed too great a financial burden on them. The industry began offering blanket policies purchased by credit unions and members received certificates of coverage at an affordable price. By 1940, 90% of credit unions owned these policies offering loan protection to their members.[iii] Today this is still the model used by most credit unions. In New York, there are currently 241 credit unions that offer credit life and there are approximately 450,000 credit life certificate holders in New York under those policies. Because credit unions have traditionally provided their members with competitive automobile loans, much of credit insurance purchased in New York is to protect a critical asset for a family – the automobile.

There is as much need for consumers to have access to this product today as there was on the eve of World War II. Alarmingly, 73% of Americans are dying with an average debt of $61,000. The most common debt is credit cards, first and second mort241gages, and car loans.[iv] The importance of a product that guards against the sudden loss of a spouse paying the mortgage or for the only household vehicle should not be underestimated.

The Costs and Burdens of Complying with this Regulation is likely to Result in Fewer Credit Unions Offering Credit Life and Other Life Insurance Products

Unfortunately, for many credit unions, forced to decide between the cost of complying with yet another regulation, this raises questions about whether to offer the financial product. Credit unions are already experiencing a crush of new regulations that forces them to make difficult choices on their product mix. Unfortunately, regulation has become an economy-of-scale issue that favors the largest financial institutions – the very same ones that brought us the Great Recession.

Consider the following hypothetical:

A long-time member goes to her local credit union to introduce everyone to her newborn baby. She explains that the credit union is like family to her. She knows everyone by name. They advised her when she took out her first car loan, helped her get through college with affordable student loans, and now she is starting to look for her second car. She says that she is wondering how to keep the car in the family because it is a critical means of transportation for the family – particularly for work. Mass transportation is not readily available to her and her family. Under present law, one of the employees can simply offer her credit life insurance with her automobile loan. It makes her loan more expensive, but insures that her family can keep the car in the event that she or her spouse dies. In deciding to purchase the product, the member can simply "take it or leave it."

In contrast, under these proposed regulations, employees responding to this long-time member would have to navigate a minefield of compliance tripwires. The employees would first have to decide:

- whether they were engaging in "a direct response solicitation where there is no recommendation made;" (224.2(a))

- whether they were offering only a product "based on an evaluation of the suitability information of the consumer that reflects the care, skill, prudence, and diligence that a prudent person familiar with such matters would use under the circumstances without regard to the financial or other interests; (224.4 (b)(1))

- whether they were responding to the member in a way that does not "state or imply to the consumer that a recommendation to enter into a transaction is part of financial planning, financial advice, investment management or related services…" (224.4)

This is just a small sample of the policies and procedures for credit unions to continue to do what they have done for decades: offer life insurance products to their members. Under this proposed rule, credit unions would need to adopt new procedures, establish new training requirements, create checklists, change their IT systems to capture data, make notable revisions to their loan origination systems provided by their vendors, and take steps for document retention and audits.

Yet, to underwrite the underlying loan, the credit union already knows that the member's situation has changed (e.g., the member is purchasing an asset) and its underwriting analysis already concluded that the member qualifies for a loan to make this purchase. The credit union member is in the best position to decide whether they need additional life insurance to protect their asset – particularly when credit life insurance is limited to the amount of the loan. As a "take it or leave proposition" on whether to purchase credit life insurance, the proposed rule would offer no value to the transaction, the credit union, or the member.

Another way this proposal will result in unnecessary confusion is that it is drafted to protect consumers purchasing life insurance, but in reality it is often credit unions that purchase group policies. Read literally, these purchases would be subject to the same protocols as consumer purchases. The final regulations should clarify this distinction. After all, by purchasing group credit life policies, credit unions protect their loan loss reserves and are ultimately better positioned to offer products and services to their members.

Perhaps most frustrating for credit unions is that, for more than a decade now, they have been lauded by federal policymakers as exemplars of prudent financial stewardship, only to be subjected to a mountain of regulations designed to deter large financial institutions that caused the financial crisis.[v]

Unfortunately, if this regulation sweeps in credit life insurance and is promulgated without substantial revisions, this trend will continue, but on the state level. Credit unions were not accused of making consumers pay for car insurance they didn't ask for and have demonstrated since their inception that properly administered, credit life and similar products really do ensure that the debt dies with the debtor. The Department has demonstrated a commitment to helping credit unions help members and we urge you to take that same approach in finalizing this well intended, but potentially damaging, proposal.

Specifically, we request that credit unions be exempted from this proposal. As mission-driven institutions with a history of properly using insurance policies to help members, there is no need to impose a compliance framework designed to address the excesses of larger profit-driven institutions, some of which have clearly taken advantage of consumers. In contrast, imposing this framework on credit unions is not only unnecessary but will hurt our members by making it less likely they will be able to use insurance products that can help them protect their savings.

Sincerely,

William J. Mellin
President/CEO

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[i] While the New York Credit Union Association also agrees with many of the broader concerns about this regulation, the purpose of this letter is to highlight areas of unique concern to credit unions.
[ii] See "The Debt Shall Die with the Debtor: The story of Cuna Mutual Insurance Society." By Philip Strand, et al.
[iii] See the Credit Union Movement: Origins and Development 1850-1980, pages 187-191
[iv] http://time.com/money/4709270/americans-die-in-debt/
[v] https://newyorksstateofmind.wordpress.com/2011/09/07/cordray-nomination-hearing-you-had-me-at-hello/