EXAMINING CREDIT UNION REGULATORY BURDENS

HEARING

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

OF THE

COMMITTEE ON FINANCIAL SERVICES

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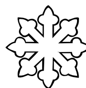

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EXAMINING CREDIT UNION REGULATORY BURDENS

Wednesday, April 10, 2013

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:03 p.m., in room 2128, Rayburn House Office Building, Hon. Shelley Moore Capito [chairwoman of the subcommittee] presiding.

Members present: Representatives Capito, Miller, McHenry, Campbell, Pearce, Posey, Fitzpatrick, Luetkemeyer, Duffy, Stutzman, Pittenger, Barr, Cotton; Meeks, Maloney, Watt, McCarthy of New York, Scott, Green, Murphy, Delaney, and Heck.

Ex officio present: Representative Hensarling.

Also present: Representative Royce.

Chairwoman CAPITO. Without objection, I am going to call the Financial Institutions and Consumer Credit Subcommittee to order. I would like to note that my favorite ranking member, Mrs. Maloney from New York, has sustained a disability that requires her to stay on the bottom row rather than come up to the top row. But I don't take that as any diminishment of her engagement or whether she is paying attention and is knowledgeable of the topics. So, hello down there, I say.

[laughter].

Without objection, the Chair is authorized to declare a recess of the committee at any time. It seems as though votes are going to be occurring at 4 p.m., so I think we will be in good shape.

This afternoon's hearing is the first in a series of hearings that our Subcommittee on Financial Institutions and Consumer Credit will be holding about the regulatory burden for community financial institutions. Today, we are going to focus on the unique challenges that credit unions face in the current regulatory environment. The purpose of these hearings is to gain a better understanding of the regulatory framework for community financial institutions.

These institutions are critical to the flow of credit in our communities across the Nation. And in particular, I will put a plug in for rural America, where I live. Credit union employees know their members and are intimately involved in the communities that they serve. Rather than relying on purely data-driven decisions, community lenders take a more relationship-based model to lending that is integral to the survival of many communities in this country.

Over the last 2 years, we have heard credit union representatives express concern about the growing regulatory burden.

In fact, one of our witnesses today, Mr. Robert Burrow, from Proctor, West Virginia, will quantify the effect regulatory burden is having on his credit union. Excuse me, I would like to recognize my current ranking member, Mr. Meeks. I mistakenly said Mrs. Maloney, because we were together last time. So I am sorry about that. I started before you got here. I apologize.

Mr. Burrow states in his written testimony, "At Bayer Heritage, we have seen our compliance costs double in just the last few years, and recently hired a new employee to help with compliance at a cost of over $65,000. These increased costs mean that we often are slower to offer services that our members want, and there are just some services that are non-starters for us, because of the compliance cost." Although these costs may seem trivial to some, they have real effects on the ability of credit unions to serve their members.

The increased cost of compliance can also have a detrimental effect on the ability of credit unions to serve their communities. In April of 2008, I was proud to join the representatives of Star USA Federal Credit Union in Charleston, West Virginia, for Kids Savings Day. The credit union took a lot of time to educate the children, to help them with learning how to balance a checkbook, what it means to save, and what it means to deposit. While it may seem trivial in some folks' mind, we know that financial literacy is a huge problem across the country and we need to learn this skill early. And this credit union was helping with that.

This is a program that was started 10 years ago and continues today. But it could be just the kind of program that if the compliance costs keep going up and up, will be cut. Recently, Federal financial regulators have expressed concerns about the difficulty in quantifying regulatory burden for financial institutions. I understand it is difficult to pinpoint specific rules and regulations that are especially burdensome, but it is the cumulative effect of new regulations being layered on top of old regulations.

The purpose of today's hearing is to take a closer look at these issues to determine ways to allow credit unions to operate in a modernized regulatory system that gives them the flexibility they need to serve the unique needs of their clients. I would like to thank our witnesses today for providing the subcommittee with thoughtful proposals for regulatory reform. And your testimony will help our Members as we begin to work on bipartisan legislation to help our community financial institutions operate more efficiently.

I would now like to yield to my ranking member, Mr. Meeks, for the purpose of giving an opening statement.

Mr. MEEKS. Thank you, Chairwoman Capito. This is a very important hearing that we are holding today. And I want to welcome all of the witnesses that we will hear from shortly. But I need to give a special shout out, of course, to Melrose Credit Union's general counsel, Mitch Reiver, for being here, because both he and Melrose are from the great 5th Congressional District of New York. But today's hearing, along with next week's hearing on community banks, are probably one of the most important topics that we can address.

Credit unions, along with community banks, are the backbones of our communities. Their lending is often countercyclical, meaning that when entrepreneurs have difficulty obtaining capital from our other lending sources, they can still find it through their local credit unions. Data from 2009 clearly reinforces this notion. The statistics show that while lending by megabanks declined by nearly double digits, credit unions' lending remained flat, allowing countless businesses and consumers to remain afloat and have access to vital capital.

Melrose has been a perfect example of how credit unions can benefit a local community. In 2009, and I will use this as an example, my office was contacted by a Queens County nonprofit organization about a problem with a megabank which no longer found their account worthy of maintaining. They did everything right, they were paying the loan back. But all of a sudden, just arbitrarily, this megabank said they didn't want to maintain them anymore. And without a line of credit from this institution, the nonprofit may well have folded and, therefore, been unable to provide services to several thousand of our constituents.

Working with Congressman Joe Crowley, we asked Melrose to consider a relationship with the organization, which they gladly did. And I am happy to report that Melrose and the nonprofit entered into a prosperous relationship as a result of getting together. Credit unions have been able to provide critical support without the advantages that other institutions maintain. Their access to capital is limited and they cannot simply issue more stock or float more debt to fund their operations, and yet credit unions must compete.

Some in Congress recognized this, and have pushed for regulatory changes that maintain safety and soundness, but allow these local engines of economic growth to remain viable. Examples of this include changes to member business lending guidelines, and along with my friend, Congressman Ed Royce, I have cosponsored legislation that will allow credit unions to increase member business lending. And I look forward to hearing from our witnesses on that subject today.

I want to close by noting that we are at a pivotal point in our economic recovery. Economic data continues to be mixed. While on the one hand, the stock market is booming and there is a nascent housing recovery under way, which are clearly fueling expansion, we also face headwinds such as the expiration of the payroll tax cut which has undermined growth. I expect there to be several proposals in this subcommittee and committee that will, I hope on a bipartisan basis, address reforms that can decisively move the economy in the right direction.

This will require credit unions and community banks to work together. In the past, whenever we have had the opportunity to advance common-sense reforms for one industry, the other gets in the way. I hope both groups will put aside their differences so that we can unlock the resources that businesses and consumers need to fuel the entrepreneurial spirit that defines America.

Thank you, and I look forward to hearing your testimony.

Chairwoman CAPITO. Thank you.

I would like to recognize Mr. Duffy, the vice chair of the subcommittee, for 2 minutes.

Mr. DUFFY. Thank you, Chairwoman Capito. I am pleased to take part in this important hearing which examines the regulatory burdens facing our Nation's credit unions. I appreciate the witnesses coming in today, and I look forward to your testimony and the answers to all of our respective questions.

My home State of Wisconsin has a proud credit union tradition. Though I don't have someone from from my district or even from Wisconsin testifying on the panel, CUNA, the national trade association, is based in the great State of Wisconsin. So, we do have nice representation. Today, we have 186 credit unions operating in Wisconsin. Now, that is impressive but, sadly, it is down from 225 credit unions a little over 2 years ago. This declining trend in the number of credit unions is very concerning.

It is becoming clear that these institutions are suffering from increased regulations and increased compliance costs, which represent direct threats to their ability to lend and operate. Instead of hiring or expanding, these institutions are forced to use their members' money to cover compliance costs. Our Nation's financial arteries flow directly through these small financial institutions and credit unions. If we continue to cut off and squeeze these arteries, we are certainly not helping families and small businesses in central and northern Wisconsin, or families and small businesses around America.

Many of my colleagues and I continue to highlight differences between small institutions and large institutions, yet we are frustrated and shocked that when rules come out, they are written with the one-size-fits-all approach. It is not right that our credit unions are being forced to service regulators and not service our American families. I look forward to a discussion today on how we can stop this consolidation trend and how we can alleviate the burdens from those small financial institutions and those who are responsible for getting dollars out the door to fund Main Street and help provide loans to our homeowners and families, not just in central and northern Wisconsin, but across the country as a whole.

I yield back.

Chairwoman CAPITO. Thank you.

I now recognize Mr. Scott for 2½ minutes.

Mr. SCOTT. Thank you very much, Madam Chairwoman, and welcome. The credit unions play an extraordinary role in our entire economy and, certainly, a central role in our financial system. And so it is important that we have this hearing. We have a chance to look at what your feelings are about the effects of the regulations that we are putting in place and have put in place in response to the financial crisis that we have gone through.

And as I said, the credit unions are a major, major player in our economy. You have over 7,000 federally-insured credit unions in this country, with 92 million members and $961 billion in assets. That is a huge part and a very important part of our economy. And we have to make sure that the abilities of the credit unions to serve our underserved populations across the Nation—this has been your core mission. It is very important that we recognize that in the regulations we have put forward.

This has to be at the center so that we do not suffocate credit unions' ability to perform this core mission. And as the country continues to recover from this economic crisis, it will be imperative that underserved areas have access to affordable financial services. The credit unions certainly provide that. Now, there are many individuals who are considered to be unbanked, unserved, and to band and help build wealth together. And in credit unions and community banks, financially vulnerable Americans find refuge from being preyed upon by loan sharks and predatory lenders.

So we have to stop this talk about taxing credit unions and move on to try to serve the underserved and build wealth together. That is our mission. That is what we have to do. Your testimony this afternoon will be very, very important in establishing the right pattern and the right direction for this committee to go as we hammer out these regulations in response to the financial crisis.

Thank you.

Chairwoman CAPITO. Thank you.

Mr. Miller for 1½ minutes.

Mr. MILLER. Thank you, Madam Chairwoman.

Credit unions have done a great job reaching middle-class and underbanked families through credit. You serve a different purpose than a lot of other financial institutions do. Your earnings return to members in the form of lower rates, higher rates on deposits, and lower fees. But even though the credit unions were not the cause of the crisis we have gone through, you are not immune from the regulations that have been placed on everybody else. I believe credit unions now have over 5,000 pages of rules from the Consumer Financial Protection Bureau, the CFPB, that you must understand, interpret, and comply with.

And it is amazing that there are 700 fewer credit unions today than there were prior to Dodd-Frank implementation, which was not that long ago. But I think we can help in a lot of ways by streamlining various regulations credit unions have to face, while ensuring the consumer protection-driven intent behind the regulations are maintained. For example, Congress should enable the credit unions and prudential regulators at the NCUA to step in where appropriate and modify CFPB rules, so long as the modified rule still meets the objective of the CFPB.

I think Congress should consider a risk-based capital system for credit unions that more accurately reflects the credit unions' risk that you take. You should require that the CFPB and the NCUA look back on the cost-benefit analysis after 3 years to ensure regulations that have a true sense about the cost of compliance of the new rule, and make sure they worked appropriately. And I think we need to work to modernize the credit unions' central liquidity facility, which we haven't done.

And Congress should modernize investment options for credit unions to give credit unions more investment options so they can better their portfolios that have risk under. I am working on legislation to address these areas and, hopefully, we can enact those and make your job a little easier in the future.

I yield back. Thank you.

Chairwoman CAPITO. Thank you.

Mrs. Maloney for 2½ minutes.

Mrs. MALONEY. Thank you, and thank you, Madam Chairwoman and Ranking Member Meeks for calling this important hearing. And I appreciate all of the witnesses who are here today. But I want to particularly welcome Mr. Reiver, whose credit union serves many of the constituents that I am honored to represent. Credit unions play an extremely important role in our financial services industry. Often, they provide services and products that their members cannot find elsewhere.

And historically, they have served underserved areas, often areas that other financial service institutions have chosen not to serve. So they are a very important part of the fabric of financial services that we provide in America. And I really am pleased that we are taking time today to highlight their work, giving them the opportunity to talk about their challenges and also giving them an opportunity to talk about the regulatory concerns and barriers that we face. We all have the goal of getting capital out, resources out to good businesses.

And in the district that I represent, and I would say throughout New York and New Jersey, which were devastated by Hurricane Sandy, small businesses are having difficulty getting those smaller loans and getting those loans below, say, $250,000 and in that range, to help them rebuild. So I am working on a bill that is narrowly focused, that would enable credit unions who are lending to small businesses affected by natural disasters such as we are suffering in 23 States from Sandy, to keep those loans from counting against the cap for a period of time—5 years—so that we get as much capital out as quickly as possible to help these small businesses rebuild.

I know from the credit unions that I work with that they are very, very proud of the relationships and bonds that they build with the communities which they serve. And I feel that this would be a way that would enable them to help in an area where the capital is not really getting there. So I am encouraged about this discussion today and I look forward to your testimony. We don't want anyone to be deprived of a loan because their credit union has hit a lending cap and they can no longer loan in that area. I have heard that is a problem in New York and New Jersey.

I thank the ranking member and the chairwoman very much for calling this hearing. I look forward to the testimony.

Chairwoman CAPITO. Thank you.

Mr. Fitzpatrick for 1½ minutes.

Mr. FITZPATRICK. Thank you, Madam Chairwoman. Prior to today's hearing, I reached out to several of the credit unions that work in the communities that I serve in southeastern Pennsylvania, around Philadelphia, about the importance of today's hearing.

These community financial institutions are providing loans for small businesses and for families. They provide important financial services for their members. And as in the case of a Ukrainian credit union near my district, they preserve the culture of the community, as well. Credit unions are undeniably important to our economy, so when the Chair announced this hearing, I wanted to reach out to them to find out, firsthand from them, how the regulations in the marketplace are affecting them individually.

What I heard, and what I plan to discuss with the witnesses today, was that it is, in fact, the case that Federal regulations are negatively affecting consumers. I heard particular concern about the CFPB and the recent rule regarding Qualified Mortgages. There is a lot of anxiety out in our communities about access to affordable credit. I heard that the cost of compliance is growing, and that those costs are now being passed on to consumers. So I look forward to following up on some of these concerns during the questions and working with the Chair on some possible regulatory relief legislation that may result from these hearings.

So I appreciate the hearing today, and I yield back.

Chairwoman CAPITO. Thank you. Mr. Delaney for 1½ minutes.

Mr. DELANEY. Thank you. I, like my colleagues, share in the admiration of credit unions and the important role they play in the community, the important role they play for their unique stakeholders and their members, and the important role they play in our economy.

I am supportive of efforts to allow additional capital, or supplemental capital, to flow into credit unions so that they can continue to grow and manage their business in a safe and sound manner. And I also—like many of my colleagues—am supportive of efforts to streamline the regulatory approach to credit unions to reflect their business plan, which is unique and is focused on their communities, so that they can effectively and efficiently pursue their mission, which is incredibly important to our economy and incredibly important to their communities.

But I am mindful, as we think about expanding the mandate of credit unions beyond the traditional mandate—tradition—particularly around business lending, that we are mindful of the role that community banks play in our country, as well. Because community banks fulfill, often times, the same mission as it relates to business lending. And they do it in a taxable framework, which adds cost to their business. It is important for me, as I hear about the efforts of community credit unions to expand their mandates, to think about it in the context of competitiveness with community banks. Because we wouldn't want to do something that would hurt community banks' ability to serve their mission, as well, by putting them at a significant competitive disadvantage in community business lending.

Thank you. I yield back.

Chairwoman CAPITO. Thank you.

I think that concludes our opening statements. So, I want to welcome our panel of distinguished witnesses. I will introduce everybody, and then I will recognize Mr. Burrow at the beginning. Mr. Burrow is a fellow West Virginian whose business is located in West Virginia. Mr. Robert G. Burrow, president and chief executive officer of Bayer Heritage Federal Credit Union on behalf of the National Association of Federal Credit Unions. I will introduce our next witness before she begins to speak.

I now recognize Mr. Burrow for 5 minutes.

STATEMENT OF ROBERT D. BURROW, PRESIDENT AND CHIEF EXECUTIVE OFFICER, BAYER HERITAGE FEDERAL CREDIT UNION, ON BEHALF OF THE NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS (NAFCU)

Mr. BURROW. Good afternoon, Chairwoman Capito, Ranking Member Meeks, and members of the subcommittee. My name is Robert Burrow, and I am testifying this afternoon on behalf of NAFCU. I serve as the president and CEO of Bayer Heritage Federal Credit Union in Proctor, West Virginia. Bayer Heritage has more than 29,000 members, with assets totaling about $300 million. NAFCU and the entire credit union community appreciate the opportunity to discuss much-needed regulatory relief for credit unions. Finding ways to cut down on burdensome and unnecessary regulatory compliance costs is a chief priority of NAFCU and its members.

A 2011 NAFCU survey found that nearly 97 percent of respondents were spending more time on regulatory compliance issues than they did in 2009. A 2012 NAFCU survey found that 94 percent of respondents had seen their compliance burdens increase since the passage of Dodd-Frank in 2010. At Bayer Heritage, we have seen our compliance costs double in just the last few years, and recently hired a new employee to help with compliance. These increased costs mean that we are often slower to offer services that our members want, and there are some services that are non-starters for us because of the compliance costs.

The ever-growing regulatory burden on credit unions stems not just from one single onerous regulation, but from a compounding of regulations stemming from a number of Federal regulators. A number of these regulations may be worthwhile and well-intentioned, but they are often issued with little coordination between regulators and without removal of outdated unnecessary regulations. In June 2012, NAFCU wrote to the Financial Stability Oversight Council to urge it to focus on its duty to facilitate regulatory coordination under the Dodd-Frank Act. We hope the committee will continue to encourage the NCUA, the CFPB and the FSOC in this regard.

NAFCU has prepared a five-point plan on where credit unions need relief and assistance. The five areas covered in this plan include: One, administrative improvements for the powers of the NCUA. This includes provisions such as the ability to grant parity to a Federal credit union on a State law, allowing the NCUA to delay or modify implementation of a CFPB rule to tailor it to the unique nature of credit unions, and requiring the NCUA and the CFPB to do a look-back, cost-benefit analysis of all new rules.

Two, capital reforms for credit unions, such as establishing a risk-based capital system for credit unions or allowing the NCUA to grant credit unions access to supplemental capital as proposed in H.R. 719.

Three, structural improvements for credit unions, such as updating a number of outdated governance and a few of the membership restrictions that are in the Federal Credit Union Act.

Four, operational improvements for credit unions. This includes modifying the arbitrary credit union member business lending cap,

as proposed in H.R. 688, or in other ways outlined in my written testimony.

Other improvements sought in this area include allowing credit unions greater flexibility to manage their investments and greater flexibility in their loan maturities. Furthermore, credit unions should be given parity with FDIC-insured institutions when it comes to interest on lawyers' trust accounts.

Five, establishing 21st Century data security standards for the safekeeping of financial and card data by those entities not covered by the Gramm-Leach-Bliley Act. My written testimony covers these and other areas where Congress should act to provide relief for credit unions.

We hope that the committee will act on these issues. In conclusion, it is not one single regulation that is creating this ever-increasing burden, rather the tidal wave of new rules and regulations such as the new mortgage rules, often coming from multiple regulators with little or no coordination between them. NAFCU expressed concerns about the potential of this happening during the debate on Wall Street reform, and this was a reason we did not support credit unions being subject to the rulemaking of the CFPB.

This regulatory burden is compounded and outdated. Regulations are not being removed or modernized at the same pace. NAFCU could support a credit union regulatory relief package being combined with regulatory relief for community banks. It is important, however, that such a joint effort be balanced between the top needs of both the credit union and the banking industry. We look forward to working with the committee in this regard.

Thank you for your time and for the opportunity to testify before you here today, and I welcome any questions you may have.

[The prepared statement of Mr. Burrow can be found on page 32 of the appendix.]

Chairwoman CAPITO. Thank you.

Our next witness is Ms. Pamela Stevens, president and chief executive officer, Security One Federal Credit Union, on behalf of the Credit Union National Association. Welcome.

STATEMENT OF PAMELA STEPHENS, PRESIDENT AND CHIEF EXECUTIVE OFFICER, SECURITY ONE FEDERAL CREDIT UNION, ON BEHALF OF THE CREDIT UNION NATIONAL ASSOCIATION (CUNA)

Ms. STEVENS. Thank you, Chairwoman Capito, and Ranking Member Meeks. My name is Pamela Stevens and I am president and CEO of Security One Federal Credit Union in Arlington, Texas, here today on behalf of the Credit Union National Association. We do appreciate the opportunity to testify on this topic: ever-increasing, rarely decreasing regulatory burden. We look forward to working with you for relief, as well.

We do appreciate the bipartisan legislation that Congress passed last year on ATM signage and the bill recently passed on privacy notifications, both of which were sponsored by Representative Luetkemeyer. These bills are a step in the right direction, and they offer a road map for future legislation. My written testimony describes regulatory burdens that credit unions face. It also lists steps the CFPB and the NCUA have taken to reduce regulatory

burden, and highlights ongoing concerns with these agencies and FASB, as well. It also makes recommendations for statutory changes to enhance service to credit union members.

Since 2008, credit unions have been subjected to 157 rule changes from over 15 agencies, most of which were written before the CFPB issued its rule. That is almost one a week. So regulatory burden isn't new. It is not a new problem for us, but it is getting worse. We are overwhelmed by the impact of these rules because we know that we didn't cause the financial crisis and we know we don't abuse our members. Yet, we are being forced to pay the price and comply with the very same rules designed for those who did cause the crisis.

Congress authorized the CFPB to exempt credit unions from some rules, and we wonder why it isn't fully utilizing this authority. We believe more attention should be directed toward the abusers, and we call on the subcommittee to ensure the CFPB proactively uses its exemption authority. My written testimony includes 35 recommendations aimed at reducing regulatory burden. Because of these lights right here, though, I can't go into all of them. So I will highlight a few for you.

Credit unions need Congress to permit them to accept supplemental forms of capital consistent with their cooperative principles. We also urge Congress to increase member business lending caps. Both of these issues deserve the attention of this subcommittee as soon as possible. And there are things Congress can do immediately, as well. We ask you to consider legislation that would change the treatment of non-owner-occupied, one-to-four-family dwelling loans. Currently, if a credit union makes such a loan, it is treated as a business loan. If a bank makes the same loan, it is a residential loan.

This disparity should be fixed. Congress should enact legislation that fully exempts government-guaranteed loans from the MBL cap, not just the guaranteed portion. We have a number of recommendations, such as clarifying share insurance coverage for pass-through accounts, and increasing the maturity limit for higher education loans. We also propose modernizing the NCUA board by: expanding that board from three to five; allowing more than one member to have credit union experience; and reserving one seat on the board for a State credit union supervisor.

We ask Congress to codify the CFPB's Credit Union Advisory Council. This is an important tool for the Bureau to receive feedback and input from credit unions. CFPB voluntarily formed this group and we want to make sure it continues. In addition, we urge Congress to address Regulation D. Today, there is a cap of six transfers per month a customer can make from a savings to a checking account. When my members ask me why this is, frankly, no matter how many times I explain it no one seems to understand. Further, eliminating the cap would save money for consumers in overdraft fees.

Finally, we look forward to the reintroduction of the Examination Fairness bill that Chairwoman Capito and Representative Maloney introduced last year. Credit unions deserve to know the legal authority that examiners are relying on. We need independent ombudsmen to hear our concerns about the process, and an inde-

pendent appeals process to resolve disputes Our proposals do not exhaust all the actions that Congress should consider, but they do represent an important first step.

We urge you to adopt these proposals, and we look forward to working with you on these issues. Thank you for the opportunity to testify.

[The prepared statement of Ms. Stephens can be found on page 68 of the appendix.]

Chairwoman CAPITO. Our third witness is Mr. Mitchell Reiver, general counsel, Melrose Credit Union. Welcome.

STATEMENT OF MITCHELL REIVER, GENERAL COUNSEL, MELROSE CREDIT UNION

Mr. REIVER. Thank you. Chairwoman Capito, Ranking Member Meeks, and members of the subcommittee, thank you for your invitation to testify in front of the subcommittee today regarding regulatory burdens on credit unions. My name is Mitchell Reiver, and for the past 24 years, I have served as general counsel and compliance officer for Melrose Credit Union in Queens County, New York.

It is my general assessment that the increasing regulatory burden on credit unions is both misguided and misplaced. Although I certainly recognize the need for appropriate regulation, too often credit unions end up paying the price for abusive practices perpetrated by non-credit-union entities. We continue to endure this reality every day, as the CFPB conducts its rulemaking process with the intent of preventing another financial meltdown, but also with the result of burdensome regulations being issued on institutions that did not play a role in causing the crisis.

A seemingly unending rulemaking process stemming from the CFPB, coupled with outdated and duplicative regulations already in statute, results in credit unions spending more resources on compliance and less on other services that actually benefit our members. Today, I would like to briefly touch on several topics I believe highlight examples where common-sense regulatory relief is needed. On the issue of the annual privacy notices, I would like to thank Representatives Luetkemeyer and Sherman for their work on H.R. 749, the Eliminate Privacy Notice Confusion Act

Streamlining annual privacy notices by requiring them to be sent to consumers only when a policy changes illustrates the general premise that consumers can often benefit more from less. Like all Americans, I, too, am concerned about the safety and security of our country. While the Bank Secrecy Act is a valuable tool, I have concerns about the effectiveness of its goals relative to the cost and compliance burdens on credit unions and other small institutions. Tens of thousands of currency transaction reports and suspicious activity reports are filed by financial institutions.

Identifying and fixing inefficiencies in these reports can help to reduce these costs. For example, it would helpful to understand more about how the government and law enforcement are using reports, as well as what types of reports are useful and which are not. BSA compliance disproportionately burdens smaller financial institutions, including approximately 3,000 credit unions that have 5 or fewer employees, but must comply with BSA compliance. I fear

the credit unions will spend significant time and cost if the proposed customer due diligence proposal is finalized.

The proposal requires expanded due diligence regardless of risk. It should be the other way around. More focus should be placed on strengthening rules that apply to other types of institutions that are not subject to these strict requirements. Examination fairness is another area of concern for all credit unions. Melrose is a New York State-chartered credit union, supervised by our State Department of Financial Services.

The NCUA examples the credit union in its role as the insurer of our shares. It has long been the case that our primary regulatory is superseded by the NCUA during what are typically joint exams. It does appear that the quality and competence of the NCUA examiners has improved over the years. However, as a State-chartered credit union, if the system of dual chartering is to mean anything, the NCUA should defer to our State regulator and not the other way around.

On the issue of examinations, I would like to thank Chairwoman Capito and Representative Maloney for their hard work on examination fairness legislation. Establishing a process for credit unions to share their examination experiences without fear of retaliation is extremely important, as well as giving credit unions an opportunity to appeal an examination decision through an independent process.

Credit unions are also now faced with virtually impossible new requirements for conducting international remittances. The CFPB's new disclosure requirements for remittances will clearly create a burden on our operations both in cost and compliance. These new rules would require credit unions to disclose real-time foreign taxes and fees imposed by financial institutions overseas, information that may not always be readily available or guaranteed at the time of the initial transaction. These rules will most certainly cause many, if not all, smaller credit unions which offer remittances to end those services.

Remittances are an essential service required in areas across the country with large numbers of foreign-born citizens and temporary and permanent residents. They provide a vital monetary lifeline between an individual residing here and his or her family in another country. Although the CFPB did revise its exemption threshold from 25 remittances per year to 100, this threshold is still much too low to offer any measurable relief for participating credit unions. Instead of credit unions being required to provide information on taxes and fees that are subject to change without their knowledge, they should instead be given the flexibility to provide disclosure of the highest possible fees and maximum possible taxes the member might incur.

Credit unions strive to provide only the best services to their members. The more time and resources we spend on complying with the conveyor belt of new and existing rules, the less time we can spend on providing quality services to our members.

Chairwoman Capito, Ranking Member Meeks, I would like to again thank you for inviting me here today and affording me the opportunity to testify. I am happy to answer any questions you may have.

[The prepared statement of Mr. Reiver can be found on page 64 of the appendix.]

Chairwoman CAPITO. Thank you all. That concludes our testimony, and begins the questioning phase. I will begin, and I will yield myself 5 minutes for questioning.

Very quickly, do all three of your credit unions write mortgages? Mr. Burrow?

Mr. BURROW. Yes, we do.

Chairwoman CAPITO. Ms. Stevens? No. Mr. Reiver, yes.

Mr. REIVER. Yes, ma'am.

Chairwoman CAPITO. Okay. So to the two gentleman, with the QM rule that has just been put out by the CFPB, have you had a chance to digest what effect this will have on your ability to write mortgages, and what do you see down the road in that area? Mr. Burrow?

Mr. BURROW. Okay. Yes, we have given that some thought. Right now, probably most of our mortgages would, in fact, be within the purview of that regulation. However, in some cases, where in our rural areas I have the occasion where there are a lot of folks who—I will just stick to debt ratio requirement, for example. They may not be able to comply in that particular area. Their debt ratio may be over the 43 percent, but yet they have had long-standing credit with the credit union, and they have been in the same employment for quite some time.

They are actually what I could consider a gold-plated loan, but because of this, it would fall outside the QM. Unless that is addressed, I would—personally, I would be making exceptions and probably getting written up for them because—

Chairwoman CAPITO. So you would continue to try to write—probably—

Mr. BURROW. I would continue going—and probably my examiner—

Chairwoman CAPITO. At your own peril.

Mr. BURROW. Yes, because—

Chairwoman CAPITO. And it is interesting to note, too, that particular customer is not going to fall within the Qualified Mortgage definition in any financial institution.

Mr. BURROW. Right. But in my opinion, because it is a good loan, it is a good asset for the credit union.

Chairwoman CAPITO. Right.

Mr. BURROW. But because of a regulation, I am not going to let it walk away.

Chairwoman CAPITO. Okay.

Mr. Reiver?

Mr. REIVER. Yes. At Melrose, we portfolio all of our loans. So we are the ones who are taking the risk, and we are certainly the ones who are in the best position to assess that risk. It seems that the QM changes are designed to prevent loans being granted to people who, at some point down the line, might not be able to repay them, and to give them some type of protection, come the foreclosure process. Credit unions were never making those kinds of loans, and were never really involved in that problem to begin with.

To place that burden on credit unions, in essence, to take the underwriting out of the hands of the experts and put it in the hands

of regulators, when you have credit unions which had done this successfully for years and years and years, it doesn't seem to make a lot of sense. And if anything, will impact the ability of the credit unions to make these loans to their members.

Chairwoman CAPITO. Okay. Thank you for that.

Another question, we had a session with the regulators, talking about they quantify the cost of regulations. And the basic message there was it is difficult to quantify. And it is difficult to quantify, I think Mr. Burrow said in his statement, because it is not just one single regulation; it is the accumulation of a lot of different regulations that burden down an institution. How can you help us help them to be able to quantify this?

Because I think it is important not only in terms of your business model, but access to credit for your particular constituency. And it also eliminates your flexibility. So if you were sitting in our seat, to say to them—and we keep asking, quantify the regulatory burden here, and they are sort of, well, we can't really quite get there. What would be some of the ways you might suggest? We will start with Ms. Stevens just because she is in the middle.

Ms. STEVENS. Thank you for that question. Part of the issue is, small institutions have the same burden as a billion-dollar institution. And really, credit unions are all small institutions. But we start adding up things like staff time, the expense to train, the expense to reproduce forms, disclosures.

At Security One, we don't have any one person who is dedicated to that. We are too small to hire someone to handle compliance, so my vice presidents and I do that work. We do the research. I am the one who sits up at night reading regulations and trying to understand them. I think the answer is, Security One maybe doesn't need to be regulated along the same lines as a Bank of America, for instance. I can't envision their president sitting up at night reading the regulations. So something that fits. Not a one-size-fits-all—

Chairwoman CAPITO. Right.

Ms. STEVENS. —but an appropriate type of regulation.

Chairwoman CAPITO. Okay. Thank you. My time has expired. I would say, too, what you are asking basically is to keep the exemptive powers available to these regulators to be able to look at that. But you have also mentioned some things like cost of training, cost of hiring, time costs that you are diverting from loaning or whatever else you might be doing—

Ms. STEVENS. Right.

Chairwoman CAPITO. —in your normal business day.

Mr. Meeks?

Mr. MEEKS. Thank you. Let me ask a few questions. Because small businesses I know in New York, some, I think, that is why Mrs. Maloney's bill that she has talked about is really good. Small businesses, getting them back where they are tremendously important because they create jobs. And so with the fact that small businesses now are in more need of reliable sources of capital, if the credit union member business lending cap was increased, do you think that would have an impact on job creation?

Because we are talking about creating jobs, and I want to get people back to work who were victimized by Sandy. So by increas-

ing it, do you think it would have an impact on job creation, Mr. Burrow?

Mr. BURROW. Absolutely. I really believe that if the cap is increased, there is going to be a lot more motivation. For example, in our credit union, right now, we have a long way to go before we hit the cap. But we are very interested in investing more money in our member business lending. And that means hiring a qualified loan officer, spending a lot of money for software, and so forth. And today, we might be well below it, but if we do the job right, it won't be long before we hit that cap.

So I have to think about the long-term investment. If I am going to bump into that ceiling fairly quickly, it is going to make me step back and think, should I do that or not. And if we have the ability to get that money out into the hands of the community—I am turning away folks right now who would like to have somewhere between $50,000 and $200,000 and we are not equipped to do it. And in our neck of the woods, the chairman knows very well that employment opportunities are rare.

But the small businessman and woman are key drivers of that. And if we can help do that, it is certainly going to spike it.

Mr. MEEKS. Ms. Stevens, in your testimony, you proposed raising the de minimis amount of credit union small business loans to $500,000 and instructing that amount for inflation. The current de minimis level is—I think it is $50,000, and the average credit union business loan, if I am not mistaken is $219,000. Can you tell us why are you proposing such a significant increase?

Ms. STEVENS. This limit has not been looked at in a number of years. And $200,000 being an average does not allow enough room, perhaps in the future, for some institutions to make larger loans. There are credit unions who have done business lending since the day they opened their doors. I have a friend in Houston, the Milk Producers Credit Union. That is their basic line of business. And business lending doesn't have anything to do with taxation, as someone suggested earlier.

We know that we could contribute roughly $14 billion to the economy. And CUNA estimates we could create 140,000 jobs, I believe is the latest number.

Mr. MEEKS. So let me also then ask, Ms. Stevens, in your testimony you also recommended exempting government-guaranteed loans from the MBL cap. And right now, only the guaranteed portion of the loan is exempt. Do you believe by exempting the entire portion of the loan, we will encourage greater credit union participation in SBA programs?

Ms. STEVENS. Absolutely. And if I may add to that, we don't currently offer business loans. And the reason is because our cap would be $6.5 million, and it doesn't make sense for Security One to go out and hire the expertise to put such a small amount of loans on the books that you might have to turn away in the future.

Mr. MEEKS. So let me ask, and Mr. Reiver, you can answer this or any one of you. Because as you heard Mr. Delaney say, and I said it even in my remarks, we are looking forward to trying to have community banks and credit unions work together, et cetera. And in recent months, we have had success here in passing an ATM fee disclosure bill and a privacy notification bill out of the

House, with the cooperation and support of both credit unions and community banks.

And I was wondering, are there other types of regulatory relief measures that maybe your could get together with community banks on so that there can be something—so there is a voice of both segments that I think are very important to our communities. Is there something else you think that—and I am going to ask the same question of them when we have their hearing next week—where there are opportunities to work together?

Mr. BURROW. If we are still—if you want to still continue to talk about business lending, as far as I am concerned and our credit union is concerned we just want our members to have options. And if they can also have options with the community banks that would benefit them, that is great. In my opinion, it doesn't have to be an either/or type of thing. And if it works to the benefit of the community banks getting money into the hands of their community customers, who happen to also be our members, that is fine.

I think we can coexist that way. It is going to be—we are all going to win.

Mr. MEEKS. I am out of time.

Chairwoman CAPITO. We have been called for votes. I am going to call on Mr. Duffy to do 5 minutes of questions, then I am going to put the committee in recess. And we will reconvene in an hour. We have a lengthy series of votes.

So, Mr. Duffy, 5 minutes?

Mr. DUFFY. Wonderful. We have kind of been plugging different bills that have come up, so I will plug my own. I introduced a bill last cycle that dealt with the standard of review for CFPB bills, when they go to FSOC, giving our credit unions and small banks a louder and bigger voice to have those rules reviewed. You all supported that, and we are going to hopefully get some support behind that bill again. So, that is my shameless plug.

I know you all agree that our credit unions are burdened by regulation, right? But can you come to us today and say, listen, yes there is new burdensome regulation, but our institutions are far safer and sounder because of this new burdensome regulation? Is that the case?

Mr. BURROW. I can't honestly say yes to that. I don't—

Mr. DUFFY. You are safer, or you are not safer?

Mr. BURROW. I can't say that I am any safer.

Mr. DUFFY. Okay. But that aside, are your families and your small businesses treated in a much fairer way now that you have these new rules and regulations and hoops to jump through?

Mr. BURROW. That—

Mr. DUFFY. No?

Mr. BURROW. Go ahead.

Mr. DUFFY. You were treating them fair from the start, right?

Mr. BURROW. We were fair before, I guess was my point.

Mr. DUFFY. Right.

Mr. REIVER. We are credit unions. That has never been an issue.

Ms. STEVENS. I might say that they are treated less fairly because we are spending more time on regulations than we are helping them.

Mr. BURROW. Good point.

Mr. DUFFY. Sure.

Ms. STEVENS. And working with them directly. Resources are diverted, that sort of thing.

Mr. DUFFY. I think that is an important point, that we really have to focus on new rules and regulations which haven't made you any safer, any sounder, and haven't helped the clients and the families and the small businesses which you serve. It has actually made it more difficult for you to serve them.

I mentioned in my opening statement that I was concerned about consolidation. I see that in Wisconsin, but I don't know if you have seen that around the country. Do you see that coming? If you are seeing that, do you see it coming from the new regulatory burden, or is something else happening that is causing this consolidation, Mr. Burrow?

Mr. BURROW. I have an example I think might fit what you are talking about. About a year or so ago, the National Credit Union Administration came to us and said that there was a very small credit union in Glendale, Reynolds Memorial Hospital. The chairman is very familiar with that credit union, I am sure. And they were not in financial trouble. They had good capital, they did everything right, playing by the rules. But you are talking about a staff of one, maybe one-and-a-half.

And they basically said, we can't keep up anymore. We can't do it anymore. We have to find a merge partner. And so NCUA came to us and asked if we would be willing to do that. Geographically, it worked out very well for us. But they didn't quit being the credit union because they—it wanted to or they weren't doing a good job. They just couldn't keep up anymore. And so to me there is an example of one less credit union out there simply because of the regulatory environment we are in. The one-size-fits-all doesn't work.

Ms. STEVENS. If I may add, my colleague referred to it as a conveyor regulatory burden. I think of it more as a treadmill. I am constantly running trying to keep up. And I live in fear that perhaps we are not in compliance because there are not enough of us to handle that.

Mr. DUFFY. And I think in my district, the average is 10 employees. We are small, and that one person can even specialize in the compliance part.

Mr. REIVER. At our credit union, we have 50 employees. And I would say that every one of them spends at least a portion of their work day complying. It is a tremendous, tremendous burden. And the members, by and large, are not deriving a lot of benefit from it.

Mr. DUFFY. If I can just ask one question, I only have a minute left. If you could pull a bit of fairy dust, bipartisan fairy dust, out of your pocket, and get people to work together in Congress—House and Senate—I know you have all indicated several things that you would like to have happen, you have given us a list. It is hard to get people to agree to move anything. But if you were to give us one message to go—if you guys could do one thing, move this one bill, it would give us the greatest mileage. And I know you have said this, and it is a pile-on effect, it is all the different rules.

It is hard to identify one. But you are not going to see—and I hope you would see a lot of bipartisanship, but if you could say,

hey, get this done for us, get this one thing. This is the greatest mileage we would get. If you guys would all give me one thing that could happen—

Ms. STEVENS. I am ready.

Mr. DUFFY. Oh, go. I can tell you are ready.

Ms. STEVENS. Supplemental capital would be very, very helpful for us. We have one way to raise capital, and that is the retained earnings. In a month's time, a big change can happen in an institution. For instance, our General Motors employees received profit-sharing checks to the tune of about $7,000 last month. Our assets rose $2 million, and we dropped almost 70 basis points in net worth.

We have no way to raise supplemental capital, and NCUA is not very—they don't have a lot of—they are—there is no flexibility with PCA requirements.

Mr. DUFFY. And I am over time, but can I just get a quick answer from everyone before we go?

Chairwoman CAPITO. Yes.

Mr. DUFFY. Mr. Burrow?

Mr. BURROW. Exempt credit unions from CFPB regs.

Mr. DUFFY. Good.

Mr. REIVER. Sure, I agree with that.

Mr. DUFFY. Okay. I yield back. Thank you.

Chairwoman CAPITO. Thank you.

With that, the committee will stand in recess. I apologize for this, but it is the hazards of Capitol Hill. We will return, the intention is, at 3:45.

Yes?

Mrs. MALONEY. It is so hard to move around. Can I continue questioning them, or not?

Chairwoman CAPITO. We only have—what?

Mrs. MALONEY. Three minutes left?

Chairwoman CAPITO. Three minutes left to go.

[recess].

Chairwoman CAPITO. Let me—okay. I am going to call the committee back into order, and I am going to yield to Mr. Scott 5 minutes for questioning. Thank you, and thank you for your patience. I apologize. But I wasn't too far off about when I thought we would be finished.

Mr. SCOTT. Thank you very much, Madam Chairwoman.

As I said in my opening statement, credit unions are a very important part of our financial structure and so are community banks. And so I think it is important for us to try to find areas where the two can work together. And let us use as our point of reference here two bills, and let me get your reaction to one bill which is H.R. 719. Are you familiar with that?

Are you all familiar with that one, H.R. 719? As I understand it, H.R. 719 would shift the credit unions' reliance on retained earnings and would allow capital from outside investors to be included in the regulatory net worth requirements, correct? So let me ask you whether H.R. 719 would make credit unions beholden to outside investors without ceding your tax subsidy as a community-based nonprofit institution?

Ms. STEVENS. Could you repeat that last part of the question, please?

Mr. SCOTT. Would this bill, H.R. 719, which would shift the credit unions', your reliance, on retained earnings, and would allow capital from outside investors to be included in your regulatory net worth requirement, would—whether or not that would make credit unions beholden to outside investors without ceding your tax subsidy as a community-based institution?

Ms. STEVENS. Yes, we definitely support supplemental capital within the correct framework that would allow us to maintain our cooperative structure. We envision this as being something perhaps members would supply. But we don't believe it changes our structure in terms of our tax status, either.

Mr. SCOTT. What I am getting at here is, credit unions feel that in some measure you all threaten them. That it is a competitive situation here. And so what I want to give an opportunity for you to respond to is just simply to answer: Where is this threat? Will that be a threat? And that segues into the other question I wanted to ask relative to House Resolution 688. Which, really, these two issues are the meat of the matter.

Because you all have a tax exemption. You have a charter. You have certain situations for your benefit that the community banks don't. They see that as maybe some sort of competitive edge. And so that is what this question was for, to use that tax policy. And then on H.R. 688, you want to raise your member business cap for loans for small businesses from 12.25 percent to 27 percent of assets. Do you see this as giving you some competitive edge over community banks?

We are faced with that. Now, personally, I love credit unions and I love the banks. And many of us on this committee feel the same way. We have to juggle this love affair and try to treat everybody fairly. So I wanted to respond to that. And if you could, explain to me why you would move from 12.25 percent to 27.5 percent, which is a 100 percent increase. So if you could just—

Mr. BURROW. I would like to respond to that, if I could. First of all, if I could go back to your original question about supplemental capital. I believe that just gives the NCUA the ability to allow credit unions, with some parameters, the access. It doesn't automatically give them supplemental capital, it just gives them the ability, in good times and bad. And we went through the bad times. And the only way we can build capital is basically through retained earnings, basically the spread between what we earn and what we pay.

And that is the only way we can get capital. It just gives credit unions the ability to have another outlet. And to say that we are beholden to the investor, well, if the investor wants to invest in the credit union if it is a poor investment by investing in the capital—their capital in the credit union, the investor will be the one who will be paying the price for that.

Mr. SCOTT. And—very quickly, if I may, Madam Chairwoman. Could you give me a response to this differential? You are at 12.23 percent of your asset, and you want to go to 27 percent.

Mr. BURROW. Yes.

Mr. SCOTT. I am sure you didn't just pluck that out of the air. There has to be some rationale. And if you would move down that road in any way, would 18 points or 20, somewhere in the middle, be helpful?

Ms. STEVENS. If I could give a little bit of history on that, there didn't used to be any limit. Currently, credit unions represent roughly 5 percent of the small business loans in the community area. And even if we were to all exhaust all of our limits, we would still only, in that small community field across the country, account for 10 percent of the business. So it is not like we are taking a great deal of business away.

We don't have a fight with our community banking brethren. In fact, I think we have a lot in common. There are a number of regulations—Reg D, some of these other things we are looking at—exam fairness, the way FASB accounts for loan losses that we can agree on. There is room for agreement on some things. But some of the things we want don't impact them at all, either.

Mr. SCOTT. Thank you for your generosity, Madam Chairwoman.

Chairwoman CAPITO. Certainly.

Mr. Miller for 5 minutes.

Mr. MILLER. Thank you, Madam Chairwoman. I really enjoyed the testimony today. But as I see it, credit unions kind of serve a different purpose, to some degree, have a different clientele and have different structures than banks in many fashions. So the problem I am having is, I look at the CFPB and the regulations that are being imposed, and I recognize the consumer-driven intent behind the CFPB regulations. But I guess, for Mr. Burrow, I have a question. Do you think the regulations coming out of the CFPB have been written in such a way that they fit credit unions, number one?

Mr. BURROW. No, sir, I don't. The reason is that any time you try to have one-size-fits-all—and I know it is well-intentioned and everyone was trying to do the right thing—but when you do something in haste and it is sort of one-size-fits-all, it never really works. And as a credit union, we look at ourselves as being Main Street. We are not Wall Street, but yet because of some of the things that Wall Street did, we are still paying the price on Main Street. So to answer your question, absolutely not.

Mr. MILLER. And further acceding to this coordination between the NCUA and the CFPB, as it—to ensure credit unions can comply with rural requirements?

Mr. BURROW. My impression is, there really probably isn't much coordination there. And I am just speaking as one credit union, and my interaction is solely with my NCUA examiners. But I find them often times to be just as confused about what their role is, and the regs and what they can do, as maybe we are. So I would guess from that there is not a whole lot of coordination between the two.

Mr. MILLER. Now, your risk-based capital standards, Basel III cap standards, they don't directly impact credit unions. But current capital requirements for credit unions are not related to the level of risk within each individual portfolio. But what implication does this have on your portfolio—

Mr. BURROW. I really believe that—I am sorry, I didn't mean to interrupt you.

Mr. MILLER. No, you didn't.

Mr. BURROW. I just really believe that risk-based capital is appropriate for credit unions because we are simply held to a percentage and that is that. The current system doesn't really evaluate the riskiness of our assets. And I do believe that our peers in the banking industry have that benefit and they can build their capital based on the riskiness of their portfolio business. And I just think it is appropriate for us to do the same.

One of the examples that is given all the time is, in the credit union world, a 30-year fixed-rate mortgage with 1 year left to pay on it is held at the same risk as an unsecured loan. You and I both know that 30-year mortgage with only 1 year left to go is a lot less risky than an unsecured loan. But there is no modification for that.

Mr. MILLER. I briefly touched on it, but you mentioned in your testimony that there should be a look-back cost analysis for all new regulations after 3 years. Can you give us an example where the CFPB estimates of compliance costs have been totally off base?

Mr. BURROW. One of the areas that is in front of us right now is the issue of remittances. I know that this is a part of the regulation that may seem like it only hits the East and West Coast maybe. But here in West Virginia, at our particular credit union, we have a lot of members who are Germans from Bayer Corporation. They are engineers, and they spent their time here in the States and now they are going back home.

Or we have engineers from the States who are spending their time in Germany. To make a long story short, there is money that moves back and forth all the time. And this is a situation where, right now, we don't even know if we comply and we have no idea what the change in the value between a dollar and a euro is going to be and all that kind of stuff. And it is going to get to the point where we may not even be able to offer that service.

So, I think even though the intention is good, there are unintended consequences and costs related to what the CFPB is trying to do, and it is innocent, I realize. But they—it is just not known, and sometimes when you go ahead and do something like this, it is a lot more costly than you realize.

Mr. MILLER. And on that, the Federal Credit Act restriction investment options for credit unions, what does this mean for your ability to manage portfolio and risk?

Mr. BURROW. There should be some flexibility, I believe. And I think—

Mr. MILLER. That could be for anybody who wants to answer.

Mr. BURROW. Oh, I didn't mean—

Mr. MILLER. It doesn't matter.

Mr. BURROW. Sorry.

Mr. MILLER. No, you are doing fine, unless somebody else wants to deal with that one.

Mr. BURROW. One of the areas I think where we were talking about investment flexibility is investment options. And it would be nice if credit unions could invest—I think it is recommended in some—and by the way, thank you for even considering legislation for regulatory relief. We really appreciate that.

Mr. MILLER. We are going to introduce it, so yes.

Mr. BURROW. But, if we could invest, say, 10 percent of our assets in investment grade securities, that would be a very nice option for us.

Mr. MILLER. But you are restricted from doing that.

Mr. BURROW. Correct, right now, we can't do that.

Mr. MILLER. Yes, okay, thank you.

I yield back.

Chairwoman CAPITO. Thank you.

Mr. Heck for 5 minutes.

Mr. HECK. Thank you, Madam Chairwoman.

Question one relates to supplemental capital, your request for increased access. Anybody can answer. I am wondering if you are aware of any other kind of entity which is also nonprofit and regulated directly or indirectly by Federal or State Government—an example would be a mutual insurance company—which is similarly prohibited from having access to supplemental capital? And if not, why are you being singled out? Does anybody know the answer to that question?

Ms. STEVENS. I am not aware of any other institutions who have been singled out like this, and—

Mr. HECK. The others do have access to—

Ms. STEVENS. They do have access to other forms of capital, and we are not sure why we shouldn't have that same option.

Mr. HECK. Question two: I represent an area of the country that is region five, or zone five. The data seem to indicate that we are being written up, via examination, for a 10 percent higher number of infractions. The data also seem to indicate that we are as safe and sound, and have no greater measure of risk for default, than other regions. Obviously, that is kind of a frustrating circumstance. What do you suggest we do to bring more consistency into this thing so different areas aren't effectively being held to different standards in that kind of a fashion? What can we do?

Mr. BURROW. I think it has been discussed, and I think it has merit, to have a—separate and apart review process, where it is not—for example, if we have an issue with our NCUA examination the only thing I can do right now is basically write a letter to the regional director. And I don't want to say that it is not objective, but I have—I just don't have a trust factor there, when my letter goes out. Am I going to—I feel like that I am going to be subject, possibly, to some blowback later.

Mr. HECK. You want an independent appealable body.

Mr. BURROW. Yes, sir, I do.

Mr. HECK. So how would that exempt you from blowback? Because even if they ruled in your favor, it is the same examiner who is coming back next year.

Mr. BURROW. No. There is no perfect world, I guess. But I think that would be a step in the right direction. Right now, I just don't think it is—honestly, real-life—

Mr. HECK. I would hope all your comments have been honest today, Mr. Burrow.

[laughter].

I trust they are.

Mr. BURROW. Yes, poor choice of words. Sorry about that. Anyway, real-life example. I will be brief. We had an issue with our

examiner in the examination in September. We didn't get our report. It was February, and we still hadn't gotten our report. My board was chomping at the bit—why haven't you received it? We talked about it in the board meeting. I said, I can send a letter if the board authorizes me to. After a lot of discussion, I had the letter written. Everybody said, well, you know what? It is probably not going to go anywhere anyway, so forget it.

Then, later on, the examiners were in. They read the board minutes, they see that that was even discussed. My examiner came to me—now, I have known her for years—and she was really upset that was even discussed. And I talk to her like I would another staff member, basically. I said, that is the board's right. They wanted to know what is the examination's finding. But you can see what I am talking about.

Mr. HECK. Yes.

Mr. BURROW. They are not always professional. They take it personally, and that is a concern.

Ms. STEVENS. Three words—exam fairness legislation.

Mr. HECK. Thank you. I will follow up on that, to be sure. Last question. Interestingly enough, one of the things I hear most often about from credit unions in my district is this little arcane remittance issue. As I understand it, the CFPB proposed an absolute limit of 100 per year. Is that not true?

Ms. STEVENS. Oh, yes. It is true.

Mr. BURROW. Yes, it is true.

Mr. HECK. And as I understand it, you all had indicated that there might be a better way to skin that cat. Namely, not counting any more than once the same person from the same point of origin to the same destination. What has been the feedback to you from that otherwise seemingly common sensical idea from the CFPB as they are reevaluating the impact of their arbitrary—

Mr. BURROW. I have not received anything back so I can't—

Mr. HECK. You don't know?

Mr. BURROW. No.

Ms. STEVENS. I have not heard of that particular solution, but I can say that 100 per month is—or, excuse me, 100 per year—

Mr. HECK. Per year.

Ms. STEVENS. —is absolutely too low. We are trying to get into that business. Our first foray into that business, the provider we contracted with totally went out of the business because it is so difficult, if not impossible, to comply. We are serving a Hispanic community in our area who has a great number of these remittances they need to do, and our estimates are that—what is that, two a week? Is that right? And if I have 1,300 members, and 50 percent of them are trying to do a remittance transfer—and they get a week—every week, 100 in no way addresses where we need to be.

Mr. HECK. Thank you.

My time has expired. I thank you for your indulgence, Madam Chairwoman.

Chairwoman CAPITO. Thank you. Without objection, I would like to enter two statements into the record: one from the American Mutual Share Insurance Corporation; and one from the Coalition for Credit Union Access.

Hearing no objections, it is so ordered.

Mr. Posey for 5 minutes.

Mr. POSEY. Thank you, Madam Chairwoman. I was wondering if the three of you, or any of the three of you, are aware of any financial regulatory issues that the credit unions and the community banks agree should be changed.

Mr. REIVER. One would be the Reg D.

Mr. POSEY. I am sorry?

Mr. REIVER. Reg D—

Mr. POSEY. Reg D.

Mr. REIVER. —would be one, which is—limits the number of transfers to six per month. Which is a very, very small number, given the way we transact business now.

Mr. POSEY. Okay.

Mr. REIVER. So that would be one, for sure. I think the CFPB, while the agency itself is doing a wonderful job in trying to work to protect consumers, there are some regulations that adversely impact not only the credit unions but the community banks, as well. This remittance rule being the largest of them, I am sure, that there would be complete agreement between both the credit unions and the community banks on that issue.

Mr. POSEY. Okay.

Ms. STEVENS. I would add, the exam fairness legislation that—I am really on the heels of that one. And the way FASB proposes to account for—requires to account for our loan losses. That would be another one that I think we could all get on board with that.

Mr. BURROW. And I had a couple.

Mr. POSEY. Please.

Mr. BURROW. Privacy notices—notices.

Ms. STEVENS. Yes.

Mr. BURROW. I think we could agree upon that, and getting rid of all the redundancy there. And a big one, I think, for both of us would be the Durbin Amendment. It has done nothing but hurt interchange and make card programs less viable. And we are seeing it month by month. Or even though we are supposed to be exempt, our per transaction return is dropping as we speak. So that would be two areas.

Mr. POSEY. I have heard both types of institutions also tell me that no two fill out a Reg Z, as in "zero," the same. Have you heard that?

Mr. BURROW. I can't speak to that, I am sorry.

Ms. STEVENS. I can't answer that, but we can—

Mr. BURROW. We can get back to you on it.

Ms. STEVENS. Yes.

Mr. POSEY. Okay. Non-accrual loans. Do you think the current evaluation of non-accrual loans—that the opinion of the examiner, the guy shouldn't be able to make a payment—is appropriate?

Mr. BURROW. Could you repeat that for me, please?

Mr. POSEY. One of the examples we have had in some other hearings was regulators who came in and told bankers—the bankers were the first ones to mention it—that the regulator said a customer should not be able to make a payment on a loan so they put it on non-accrual. Now, it had been an 11-year-old loan and the customer had never been late one second, but the regulator, in his opinion, thought he shouldn't be able to make the payment. So it

became a non-accrual loan. Do you ever encounter those type of problems?

Ms. STEVENS. Not exactly like that.

Mr. REIVER. Yes, we have encountered that type of overreaching suggestion by a regulator. We have not encountered that one, thankfully. But clearly, that is a—that type of practice would be something that would clearly be counter to our interests as credit unions or as bankers in serving our members and customers.

Mr. POSEY. Have you had any problems with regulators that you are aware of that said any time you modify a loan it is going to go on non-accrual?

Mr. BURROW. That has—no, I—no. Are you talking about troubled debt restructuring, those types of loans?

Mr. POSEY. It could be that. It could be—

Mr. BURROW. Yes, we do.

Mr. POSEY. —just a mutual agreement to meet a common ground on an 11-year-old loan, when you were getting 12 percent? You would be glad to get 6 percent now, and you split the difference?

Mr. BURROW. Yes, that is—

Mr. POSEY. That is non-accrual.

Mr. BURROW. We are talking about TDRs?

Ms. STEVENS. Yes.

Mr. POSEY. Yes.

Mr. BURROW. Then I would absolutely, because that is an issue that has been kind of recent, and so yes. If that is what we are talking about.

Ms. STEVENS. I think it is terminology, difference between non-accrual, and troubled and restructured.

Mr. BURROW. Troubled debt restructuring, yes.

Ms. STEVENS. We do—

Mr. POSEY. Did you ever know of anyone who got stuck with an eternal non-accrual loan because, for example, a couple was laid off from work and their parents made the payments for 2 months before they got new jobs. Never was a payment a second late, nothing was missed. They are making more money now than they did before. But the institution is stuck with a non-accrual loan for the life of the loan, basically. Have you ever heard anything like that?

Mr. BURROW. Yes.

Ms. STEVENS. Yes.

Mr. BURROW. Yes, I know there are instances where either through your exam process—or sometimes if you have a private CPA firm—they will try to push you in that direction.

Mr. POSEY. Okay. I have never asked the question when I talk to the Chamber of Commerce about credit unions. I do, usually, about banks. I said how many people in here think your banker doesn't love you anymore? And everybody in the room except the bankers raised their hand. I will include you all next time I do that.

Thank you, Madam Chairwoman.

[laughter].

Chairwoman CAPITO. I would like to recognize Mr. Pittenger. No questions? Okay.

Mr. Barr for 5 minutes for questions.

Mr. BARR. Thank you, Madam Chairwoman. For all the witnesses, can each of you all describe—each of you all have already testified that the regulatory burden is very challenging for credit unions today. Can each of you describe the regulatory environment prior to enactment of the Dodd-Frank law and the CFPB for credit unions?

Ms. STEVENS. I will take that one on behalf of a small institution. We were able to concentrate on serving our members. Regulations that came forth seemed to make sense, were easier to comply with. These days, it is very difficult to even understand what some of the regulatory changes require. It takes hours and hours of time to comply with them. Our members don't read the disclosures, they don't understand why. We get blamed, often times, for making things more difficult for our members to do.

And, frankly, they don't produce any benefit. Truth in savings is an example of a regulation that did provide some benefit. Our members could look at APR versus APY and understand it. That was helpful. But not many things coming down the pipe are helpful to consumers now.

Mr. REIVER. We are dealing with RESPA, as an example and the recent RESPA reform and the pending RESPA reform. I—amongst my other duties at Melrose Credit Union—am the agent who closes all of the real estate loans for them. And I have sat there closing hundreds, if not thousands, of loans. And invariably, what I am hearing from the members when they are given a stack of disclosures is something along the lines of how many trees did you kill, this is horrible, and can't this all be automated, isn't there a better way?

I am not asking for them to say that. I am just there to help close the loan for my credit union. Those are unsolicited reactions from the members who are supposed to be the beneficiaries of these disclosures. I think they would much rather see our time, resources, and money spent on offering better or less expensive products than on paperwork that they just don't care to read. It is counterproductive.

Mr. BARR. Mr. Burrow, you testified that the number of credit unions had declined. And you attributed the decline of 700 or so credit unions and the consolidation in the credit union industry to the increasing complexity and volume of compliance costs. What impact do you see for the consumer? What impact do you see as a result of the compliance-induced consolidation in the industry?

Mr. BURROW. Probably on a couple of fronts. First of all, when you have fewer credit unions out there for choice, that hurts the consumer. Reynolds Memorial did a fine job for many, many years. Now, they are gone. We are going to try to continue to do a fine job for their members, but the fact remains that those who wanted to continue to deal with Reynolds Memorial can't do that anymore. So, there is a choice taken away.

Also, when compliance becomes too burdensome, a cost-benefit analysis by the credit union has to be done. And if the compliance costs are so great to adding that service or keeping that service, decisions have to be made, do we add a new service that our members want, or worse than that, do we take away one they got used to? And to that point specifically, the availability of certain financial

products for consumers specifically—and what I am hearing from credit unions in Kentucky is the open-ended lending rules are restricting access to certain products.

Mr. BARR. Can you speak to that?

Mr. BURROW. Do you want to jump in, or—I can speak to that. Open-ended lending, for many, many years, was a very viable way for members just to access credit that they have already established at the credit union with a lot of ease, and little paperwork. Call up, you already have the open-end plan approved. I need some money dumped in my checking account. Sure, Joe, I will go ahead and get that done, sign the note, we are done.

But now, because we want to protect the member from bad lenders, we are going to go back in time to when I first started 30 years ago, where you have a piece of paper for everything. And members hate it.

Mr. BARR. One final quick question for Mr. Reiver. You testified about establishing a process for credit unions to share their example experience without fear of retaliation. Can you give me an example of concern about retaliation?

Mr. REIVER. Again, our NCUA examiners are very thorough. But while we haven't had any direct—that we can directly attribute to making complaints, to reaching out, clearly we had occasions where, from one year to the next, especially when we have the same examiner, where there is a change, a very noticeable change in attitude, a very noticeable change in approach. And it is not positive.

Mr. BARR. Thank you.

Chairwoman CAPITO. Thank you. The gentleman's time has expired.

Mr. Stutzman for 5 minutes.

Mr. STUTZMAN. Thank you, Madam Chairwoman. And I thank the witnesses for your testimony and comments today.

Ms. Stevens, I would like to follow up a little bit on Mr. Heck and Mr. Duffy's questioning and comments regarding supplemental capital. Could you give us just a little bit of history behind that, and why—when did that law come into effect? What is the history behind that, to kind of help us understand better why you are the one institution that doesn't have access to supplemental capital?

Ms. STEVENS. I really, again, don't understand why we don't. We have limits that were statutory net worth requirements that were put into place with the enactment of H.R. 1151 years ago. And, again, the only way we can respond to our needs for net worth is to raise that money through retained earnings. I mentioned earlier that we are in a situation; we are trying to reach out to a Hispanic community in our field of membership.

And it is very difficult. There is resources required for that, and today our margins are compressed. We are spending more and more time on regulatory burden and other issues. And the ability to raise capital is difficult, particularly in times of economic stress. It would be great to be able to reach out, to have other sources for capital to shore up, and move into the future and provide services for our members.

Mr. STUTZMAN. Okay, thank you. This is a question for any of the three of you. Last week, it was reported that the White House

is encouraging lenders to use more subjective judgment in determining whether to offer a loan. Could you talk a little bit about maybe how this contradicts Dodd-Frank, potentially? Does this seem to be a mixed message sent to you all? Would anyone like to comment regarding that?

Mr. REIVER. Yes, I would be happy to address that. We had talked earlier about Qualified Mortgages. As credit unions, we do know our members. And that gives us a unique ability, as a financial institution, to really evaluate each loan, taking into account factors that we only know by virtue of our relationship with our member. I guess that is what we would refer to as "subjective standards," something other than debt to income, cash flow ratios, credit score.

So clearly, there is a direct conflict between the message from the White House: Be subjective, serve your members, and legislation that requires you to go down a checklist and the loan is approved or not approved based on a checklist that is created by somebody who might not, in fact, have any expertise whatsoever in making loans.

Mr. STUTZMAN. Because to me, it seems like you would be conflicted. What is a regulator going to expect, on one hand, because you do want to meet the needs and provide the services for your customers. But at the same time, you don't want to put yourself in a position where you are potentially whacked for doing the wrong thing. Mr. Burrow?

Mr. BURROW. Yes, I am just agreeing with you now.

Mr. STUTZMAN. Okay.

Mr. BURROW. If I could say "amen," I would say "amen." But the truth is, I agree with the White House's idea on this. Because, really, that is what we have been dealing with for years and it is only getting worse. I was told a long time ago if you are running the credit union to please the examiners, you are not going to be pleasing the members in the long run. Now, that doesn't mean we just throw caution to the wind. But lending is not an exact science.

It can't be one plus one always equals two. To be a loan officer, you have to have some intuition, you have to know the people, you have to talk to people. If it was just a formula and no matter how hard we try we want to take the risk out of it. We are not in the risk elimination business. No, we are in the risk minimizing business. We want to manage that as best we can. But we will never eliminate it. And I have a lot of charge-offs I could show you where, if I took you back, every statistic, every ratio you would use—you would say, that has to be a good loan. And it turned out to be a charge-off.

Mr. STUTZMAN. So have you seen an increase or decrease in mortgages lately over the last, let's say, 6 months?

Mr. BURROW. We have had very good mortgage—

Mr. STUTZMAN. Increase? An increase in mortgage applications?

Mr. BURROW. Yes.

Mr. STUTZMAN. How about the other two?

Mr. REIVER. Yes.

Mr. STUTZMAN. Same?

Mr. REIVER. Things seem to be moving in a positive direction.

Mr. STUTZMAN. I am sorry?

Mr. REIVER. Things seem to be moving in a position direction in terms of number of applications.

Mr. STUTZMAN. Moving better? Good, good, good.

Thank you, Madam Chairwoman. I yield back.

Chairwoman CAPITO. Thank you.

Mr. Pittenger?

Mr. PITTENGER. Thank you, Madam Chairwoman. I would like to ask one question just for clarity. Have you seen consolidation in your industry like is taking place in the community banks? I don't know that I heard that clearly. They have gone through a tremendous amount of consolidation. I served on one for many years. And just the compliance costs, the regulatory environment. Has that impacted all of you the same?

Ms. STEVENS. Absolutely. I would say we are losing—I have heard this statistic that we are losing about one credit union per day. Consolidation, there are a number of reasons for it. But in our area, a huge piece of it has to do with being able to comply with the regulatory burden that we face. It is just too much. One of my best friends retired last week. She loves credit unions, but she can't deal with the regulatory burden anymore.

If there is not someone who is going to step to the plate and take care of that, consolidation seems to be the answer.

Mr. PITTENGER. Thank you.

I yield back my time.

Chairwoman CAPITO. Thank you.

Mr. Royce for 5 minutes.

Mr. ROYCE. Thank you, Madam Chairwoman. Getting to this member business lending cap, our legislation right now has 90 House cosponsors. And I—for my constituents, I will just tell you what I have heard. And that is the stories about the jobs created or maintained in California through the access to credit unions because such a high percentage of small businesses get their loan request turned down when they are attempting to extend their credit.

And we are in an environment today where, for many of these small businesses, the credit crunch is leading to a situation where they either have to downsize or go out of business if they don't have access to that extension of the line of credit, or a new loan when their loan rolls over. So what is the market you see out there when you talk to people in the credit union line or when you talk to entrepreneurs who are trying to get access to credit?

Are these same loans going to be offered if credit unions can't step up to the plate and do more small business lending? Or are those small businesses out there today going to be in a position where they have to contract? And do you see other businesses that could benefit from this increase in the member business lending cap? Let me just hear your thoughts on that.

Mr. BURROW. Okay, could I respond to that? I think that there are a lot of opportunities being missed. I know in our credit union, for example, anything that is over $50,000 is considered to be a business loan in terms of compliance issues. And I have had a number of individuals who are employed in some type of secular employment—whether it be at the chemical plant, or wherever they might be—but they may also have their own, let's say, a contracting business on the side.

A guy comes in, he wants a $100,000 loan for a backhoe. I don't have any way of getting that to him, because it is over $50,000. I don't have the loan officer in place, I don't have everything in place to comply with the regulations as they sit now, so I have to turn him away. And a $100,000 loan is really not that big of a loan. Most banks aren't interested in it, so he may be going without.

Mr. ROYCE. What I see, when I talk to owners of small businesses—gas stations, hair salons, small manufacturing, light manufacturing—I very much hear this concern. And you look at some of the success stories. We had two firefighters in their credit union. They were able to get a loan. They didn't like the coffee at the fire hall so they started their own little operation. Firemen's Brew I think is what they call it in L.A. It is now a full-time brewery, it is a coffee importer, it is a restaurant.

And there are so many examples like that, when you have the smallest start-ups. And that is where most of the employment comes from is when you create those start-ups. Those are the ones that 85 percent of the time are turned down when they go, normally, for a loan. Yet this is the area of expertise for these credit unions. But with that cap, you are not able to—and many credit unions aren't even able to go into that line of work. Because how do you sustain something when you are capped at 12.5 percent?

But there is another issue here, and that is how examiners currently treat your business loan portfolio compared to other financial institutions as it relates to non-owner-occupied properties. Could you discuss that for a moment?

Ms. STEVENS. Yes. In fact, in my testimony, this is something we talked about earlier. Currently, if a bank issues this type of loan, it is considered a residential loan. If a credit union does it, it is considered a business loan. And we think that disparity should be fixed.

Mr. ROYCE. One more example of a change we could make with this legislation which would really open up the market, we are talking about trying to have the market recover in terms of apartments. And here, you have a difference in treatment that prevents access to capital coming into the market.

Madam Chairwoman, let me yield back.

Chairwoman CAPITO. The gentleman yields back.

With that, I see we have completed the questions. I want to thank the witnesses for their testimony and for their patience. We have learned a lot.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

Without objection, this hearing is adjourned. Thank you.

[Whereupon, at 4:35 p.m., the hearing was adjourned.]

A P P E N D I X

April 10, 2013

National Association of Federal Credit Unions

Testimony of

Robert D. Burrow
President & CEO
Bayer Heritage Federal Credit Union

On Behalf of

The National Association of Federal Credit Unions

"Examining Credit Union Regulatory Burdens"

Before the

House Financial Services Subcommittee on Financial Institutions and Consumer Credit

United States House of Representatives

April 10, 2013

Introduction

Good afternoon, Chairman Capito, Ranking Member Meeks and Members of the Subcommittee. My name is Robert Burrow and I am testifying this afternoon on behalf of the National Association of Federal Credit Unions (NAFCU). I serve as the President and CEO of Bayer Heritage Federal Credit Union in Proctor, West Virginia. Bayer Heritage has more than 29,000 members with assets totaling about $300 million. With 10 branches in four states, including West Virginia, Pennsylvania, South Carolina and Texas, we strive to improve the well-being of our member-owners each and every day.

NAFCU is the only national organization exclusively representing the interests of the nation's federally chartered credit unions. NAFCU member credit unions collectively account for approximately 68 percent of the assets of all federally chartered credit unions. NAFCU and the entire credit union community appreciate the opportunity to discuss much needed regulatory relief for credit unions. The overwhelming tidal wave of new regulations in recent years is having a profound impact on credit unions and their ability to serve the 94 million member-owners nationwide.

Historically, credit unions have served a unique function in the delivery of essential financial services to American consumers. Established by an Act of Congress in 1934, the federal credit union system was created, and has been recognized, as a way to promote thrift and to make financial services available to all Americans, many of whom may otherwise have limited access to financial services. Congress established credit

unions as an alternative to banks and to meet a precise public need – a niche that credit unions still fill today.

Every credit union is a cooperative institution organized "for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes." (12 USC 1752(1)). While nearly 80 years have passed since the Federal Credit Union Act (FCUA) was signed into law, two fundamental principles regarding the operation of credit unions remain every bit as important today as in 1934:

- credit unions remain wholly committed to providing their members with efficient, low-cost, personal financial service; and,

- credit unions continue to emphasize traditional cooperative values such as democracy and volunteerism.

Credit unions are not banks. The nation's approximately 6,800 federally insured credit unions serve a different purpose and have a fundamentally different structure than banks. Credit unions exist solely for the purpose of providing financial services to their members, while banks aim to make a profit for a limited number of shareholders. As owners of cooperative financial institutions united by a common bond, all credit union members have an equal say in the operation of their credit union—"one member, one vote"—regardless of the dollar amount they have on account. Furthermore, unlike their counterparts at banks and thrifts, federal credit union directors generally serve without

remuneration—a fact epitomizing the true "volunteer spirit" permeating the credit union community.

America's credit unions have always remained true to their original mission of "promoting thrift" and providing "a source of credit for provident or productive purposes." In fact, Congress acknowledged this point when it adopted the Credit Union Membership Access Act (CUMAA – P.L. 105-219). In the "findings" section of that law, Congress declared that, "The American credit union movement began as a cooperative effort to serve the productive and provident credit needs of individuals of modest means … [and it] continue[s] to fulfill this public purpose."

Credit unions have always been some of the most highly regulated of all financial institutions, facing restrictions on who they can serve and their ability to raise capital. Furthermore, there are many consumer protections already built into the Federal Credit Union Act, such as the only federal usury ceiling on financial institutions and the prohibition on prepayment penalties that other institutions have often used to bait and trap consumers into high cost products.

Despite the fact that credit unions are already heavily regulated, were not the cause of the financial crisis, and actually helped blunt the crisis by continuing to lend to credit worthy consumers during difficult times, they are still firmly within the regulatory reach of several provisions contained in the Dodd-Frank Act, including all rules promulgated by the Consumer Financial Protection Bureau (CFPB). The breadth and pace of CFPB

rulemaking is troublesome as the unprecedented new compliance burden placed on credit unions has been immense.

The impact of this growing compliance burden is evident as the number of credit unions continues to decline, dropping by more than 700 institutions since 2009. While there are a number of reasons for this decline, a main one is the increasing cost and complexity of complying with the ever-increasing onslaught of regulations. Credit unions didn't cause the financial crisis and shouldn't be caught in the crosshairs of regulations aimed at those entities that did. Unfortunately, that has not been the case thus far. Accordingly, finding ways to cut-down on burdensome and unnecessary regulatory compliance costs is a chief priority of NAFCU members. As evidenced by today's hearing, it is clearly a priority of the Subcommittee. We appreciate the committee's focus on this important issue.

Growing Regulatory Burdens for Credit Unions

A 2011 NAFCU survey of our membership found that nearly 97% of respondents were spending more time on regulatory compliance issues than they did in 2009. A 2012 NAFCU survey of our membership found that 94% of respondents had seen their compliance burdens increase since the passage of the Dodd-Frank Act in 2010. Furthermore, a March 2013 survey of NAFCU members found that nearly 27% had increased their full-time equivalents (FTEs) for compliance personnel in 2013, as compared to 2012. That same survey found that over 70% of respondents have had non-compliance staff members take on compliance-related duties due to the increasing

regulatory burden. This essentially means that many non-compliance staff are being forced to take time away from serving members to spend time on compliance issues.

At Bayer Heritage FCU, we have seen our compliance costs double in just the last few years and recently hired a new FTE to help with compliance at a cost of over $65,000 a year. These increased costs mean that we are often slower to offer services that our members want, and there are some services which are "non-starters" for us because of the compliance costs.

The CFPB's 3507 pages of new mortgage regulation released in January is a prime example of the growing compliance burden our nation's credit unions face. While some may argue that the directive aspects of the "rule" itself are far less than 3507 pages, they are getting the wrong impression. In order to fully comprehend the "rule" and its impact, a credit union compliance officer will have to read and digest the full 3500+ pages, which is no small task in itself, on top of handling all other proposals and daily responsibilities that they have. Covering everything from the scope of coverage under the Home Ownership and Equity Protection Act, comprehensive changes to mortgage origination and servicing, amended rules associated with the Truth in Lending Act and Financial Institutions Reform, Recovery, and Enforcement Act, changing requirements for escrow accounts and issuing rules under Dodd-Frank relative to what constitutes a "qualified mortgage"-- the breadth and pace of new requirements are daunting. The less than 12 month timeframe for implementation of the rules should cause serious pause for

lawmakers and regulators. Even if all 3507 pages are well intended, there is significant burden to small institutions in just keeping up.

New mortgage regulation aside, the ever-growing regulatory burden on credit unions stems not just from one single onerous regulation, but a compilation and compounding of numerous regulations – one on top of another – stemming from a number of federal regulators. A number of these regulations may be worthwhile and well-intentioned, but they are often issued with little coordination between regulators and without elimination or removal of outdated or unnecessary regulations that remain on the books. It is with this in mind that NAFCU President and CEO Fred Becker wrote then Treasury Secretary Timothy Geithner in his role as Chairman of the Financial Stability Oversight Council (FSOC) in June of 2012. In this letter, NAFCU urged the FSOC to focus on its duty to facilitate regulatory coordination under the Dodd-Frank Act. A copy of this letter is attached to this testimony (Attachment A). We hope the Committee will continue to encourage the FSOC in this regard.

In testimony before this Committee in May of 2012, NAFCU Board Member and witness, Ed Templeton noted that it is not any single regulation, but the panoply of the regulatory regime of numerous regulators, each operating "within their own lanes" and with minimal, if any, interagency coordination, that not only helps create, but also significantly magnifies today's undue regulatory burden on credit unions and other small financial institutions.

It is important to make clear that the tsunami of regulatory burden is impacting all credit unions and hampering the industry's ability to serve our nation's 94 million credit union members. NAFCU does not believe any relief efforts should bifurcate the industry by asset size and would not support such an approach. Providing broad-based relief will help credit unions of all sizes, especially smaller institutions like Bayer Heritage FCU, as we have limited compliance resources and don't have the economy of scale of larger institutions. All credit unions need regulatory relief and we hope that this Committee can help provide it.

Areas Where Credit Unions Need Regulatory Relief

In early February of this year, NAFCU was the first trade association (not only in our industry, but the entire financial services community) to formally call on the new Congress to adopt a comprehensive set of ideas generated by credit unions that would lead to meaningful and lasting regulatory relief for our industry. As part of that effort, NAFCU sent a five-point plan for regulatory relief to Congress to address some of the most pressing areas where credit unions need relief and assistance (Attachment B). NAFCU and its member credit unions appreciate this opportunity to expand on those ideas and hope today's discussion serves as the basis for legislation that will lead to meaningful and lasting relief for our industry. The five points outlined in our plan include:

Administrative Improvements for the Powers of the NCUA

NAFCU believes that Congress should take steps to strengthen and enhance the National Credit Union Administration (NCUA).

First, the NCUA should have authority to grant parity to a federal credit union on a broader state law, if such a shift would allow them to better serve their members and continue to protect the National Credit Union Share Insurance Fund (NCUSIF). This is a parity issue that will enable federally chartered credit unions to adequately serve their members in instances where a state law is more conducive to the lending needs and environment in that particular state. It is important to note that this does not simply mean that a federal credit union can default to a state law. The NCUA would need to approve any such shift on a case-by-case basis, ensuring that safety and soundness concerns are addressed. It also must be recognized that in many instances a federal rule addressing an issue that has arisen in a particular state or region simply does not exist. Without the ability to instead use the state law, federal credit unions could be hamstrung in trying to serve their member-owners.

Second, the NCUA should have the authority to delay the implementation of a CFPB rule that applies to credit unions, if complying with the proposed timeline would create an undue hardship. Furthermore, given the unique nature of credit unions, the NCUA should have authority to modify a CFPB rule for credit unions, provided that the objectives of the CFPB rule continue to be met. Since the modified rule would be

substantially similar to the original rule, and achieve the same goal, the argument that this would undermine the CFPB's intentions is not valid. Granting NCUA this authority would help address one major issue facing the CFPB. Unfortunately, the CFPB has been given the impossible task for writing one rule that will work well for both our nation's largest banks and the smallest credit unions.

An example of where this is necessary is the CFPB's new remittance transfer rule. As part of a regulatory relief package in the 109th Congress (H.R. 3505 / P.L. 109-351), Congress explicitly granted all credit unions the ability to offer remittance services to anyone in their field of membership in an effort to draw the unbanked and under-banked into the system by familiarizing them with credit unions. The CFPB's new rule, since it can't be tailored specifically to credit unions, will likely drive many credit unions out of the remittance business altogether. A January 2013 survey of NAFCU members found that nearly 27% of respondents will likely cease offering remittance services because of the new rule. If NCUA had greater flexibility, this issue may be able to be addressed. The NCUA already has had this type of authority in the past in conjunction with other regulators, and has this authority now with tailoring Truth in Savings to the unique nature of credit unions.

It is worth noting that NAFCU has serious concerns about the remittance transfer rule and has taken every opportunity to educate the CFPB on the position of credit unions and how the new rule will likely impact the marketplace. The overly broad definition of "remittance transfer" used in the rule imposes new requirements on all international

electronic transfer of funds services, and not just transmissions of money from immigrants in the U.S. to their families abroad—which are in fact conventional remittances. The new regulatory and disclosure requirements requiring providers to provide senders with detailed disclosures with respect to third party fees and foreign taxes will create obstacles so great that many credit unions are likely to stop offering this service.

Third, the NCUA and the CFPB should be required to conduct a look-back cost-benefit analysis on all new rules after three years. The regulators should be required to revisit and modify any rules for which the cost of complying was underestimated by 20% or more from the original estimate at the time of issuance. Credit unions did not cause the financial crisis yet all credit unions are subject to the same CFPB rules as larger for-profit mega banks. As a result, credit unions find themselves drowning in regulatory burden stemming from the CFPB and NCUA. It should be noted that many credit unions only have one or two people dedicated full-time to compliance issues, yet they have to comply with the same CFPB rules as mega banks thathave an army of lawyers to work on these issues.

There are many instances where the regulator is off base in terms of projecting the compliance cost for credit unions. While some examples may seem insignificant, it is the cumulative effect of layering requirements on top of requirements that creates an environment where a credit union simply cannot keep up. For example, the CFPB recently expanded their survey of credit card plans being offered by financial institutions

to include credit unions. The survey purports that the "Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time to gather and maintain data in the required form and to review instructions and complete the information collection." Feedback from NAFCU members indicates that it takes more than 15 minutes just to read the survey instructions, so the idea that the entire process of reviewing and completing the survey could take a total of 15 minutes defies common sense.

In a March 2013 survey of NAFCU members, respondents said that over 55% of compliance cost estimates from the NCUA/CFPB were lower than the credit unions actual cost (That is, the cost was greater than the estimate from the regulator). In the instances where the compliance costs were underestimated, the costs were off by more than 25% over a quarter of the time.

We would also draw your attention to recent cost estimates provided by the CFPB with respect to the periodic statement disclosure requirements under the Bureau's amendments to Regulation Z, which implements the Truth in Lending Act. This final rule is the result of a Dodd-Frank directive regarding mortgage loan servicing. The potential costs to comply with the periodic disclosure requirements as estimated by the CFPB (http://www.federalregister.gov/a/2013-01241/p-950) are radically different than the annual per loan cost estimates provided by various covered entities, including credit unions, during the public comment period for the rule.

Furthermore, the lack of information on these current servicing practices makes it impossible to determine the impact of the rule on the production and distribution of disclosures. Thus, all projections about the likely cost of the rule should be considered flawed. This type of confusion exemplifies how important it is for CFPB rulemaking to be clear and concise. Clear directives will facilitate more accurate cost-estimates and benefit all parties involved. The goal of this provision is to create a truth in compliance burden estimation not only so credit unions are able to properly plan in allocating staff hours and resources, but also to foster a better understanding between credit unions and their regulators in terms of how various rules and regulations are implemented in practice.

Fourth, new examination fairness provisions should be enacted to help ensure timeliness, clear guidance and an independent appeal process free of examiner retaliation. NAFCU supported the bipartisan "*Financial Institutions Examination Fairness and Reform Act*" *(H.R. 3461)* introduced last Congress by Chairman Capito and Rep. Carolyn Maloney and is hopeful that the issues that this bill sought to address are given consideration moving forward. Credit unions must have adequate notice of and proper guidance for exams, the right to appeal to an independent administrative law judge during the appeal process, and be assured that they are protected from examiner retaliation.

Finally, the Central Liquidity Facility (CLF) should be modernized with changes such as: (1) removing the subscription requirement for membership, and (2) permanently removing the CLF borrowing cap so that it may meet the current needs of the industry.

Capital Reforms for Credit Unions

NAFCU believes that capital standards for credit unions should be modernized to reflect the realities of the 21st century financial marketplace.

First, the NCUA should, with input from the industry, study and report to Congress on the problems with the current prompt corrective action (PCA) system and recommended changes.

Second, a risk-based capital system for credit unions that more accurately reflects a credit union's risk profile should be authorized by Congress. We ask that Congress amend current law to make all credit unions subject to risk-based capital standards, and direct the National Credit Union Administration (NCUA) to consider risk standards comparable to those of FDIC-insured institutions when drafting risk-based requirements for credit unions. Credit unions need this flexibility to determine their own risk and to leverage all their resources to provide the best financial services possible to their membership.

Third, the NCUA should be given the authority to allow supplemental capital accounts for credit unions that meet certain standards. NAFCU applauds Reps. Peter King and Brad Sherman for introducing bipartisan legislation, the *Capital Access for Small Businesses and Jobs Act* (H.R. 719), that would improve the ability of credit unions to serve their members by enhancing their ability to react to market conditions and meet

member demands. We would urge the Committee to act on this legislation. Under current law, a credit union's net worth ratio is determined solely on the basis of retained earnings as a percentage of total assets. Because retained earnings often cannot keep pace with asset growth, otherwise healthy growth can dilute a credit union's regulatory capital ratio and trigger nondiscretionary supervisory actions under prompt corrective action (PCA) rules. Allowing credit unions access to supplemental capital would help address this issue.

Finally, given that very few new credit unions have been chartered over the past decade, and in order to encourage the chartering of new credit unions, the NCUA should be authorized to further establish special capital requirements for newly chartered federal credit unions that recognize the unique nature and challenges of starting a new credit union.

Structural Improvements for Credit Unions

NAFCU believes there should be improvements to the *Federal Credit Union Act* to help enhance the federal credit union charter.

First, Congress should direct the NCUA, with input from the industry, to study and report back to Congress suggested changes to outdated corporate governance provisions in the Federal Credit Union Act as several parts haven't been updated to reflect modern day corporate governance since the advent of credit unions and the Act in 1934. Congress,

upon receiving the report, should ensure this mundane yet important issue receives the consideration it deserves. For example, the FCUA currently requires a two-thirds vote to expel a member who is disruptive to the operations of the credit union, at a special meeting at which the member in question himself has the right to vote. NAFCU does not believe that this is in line with good governance practices, and feels that the FCUA should be amended to provide federal credit union boards flexibility to expel members based on just cause (such as illegal behavior, harassment or safety concerns). Given more flexibility in statute, the NCUA would be able to work with credit unions on a case-by-case on a number of different issues pertaining to corporate governance.

Second, a series of improvements should be made to the field of membership (FOM) restrictions that credit unions face. This should include expanding the criteria for defining "urban" and "rural" for FOM purposes and also allowing federal credit unions that convert to community charters to retain their current select employee groups (SEGs).

Finally, Congress should clarify that all credit unions, regardless of charter type, should be allowed to add underserved areas to their field of membership.

Operational Improvements for Credit Unions

Credit unions stand willing and ready to assist in our nation's economic recovery. Our industry's ability to do so, however, is severely inhibited by antiquated legislative restrictions.

First, Congress should show America that they are serious about creating jobs by modifying the arbitrary and outdated credit union member business lending (MBL) cap. This can be done by raising the current 12.25% limit to 27.5% for credit unions that meet certain criteria. We are pleased to see legislation introduced in the form of H.R. 688, the *Credit Union Small Business Jobs Creation Act*, by Representatives Ed Royce (R-CA) and Carolyn McCarthy (D-NY) which would do just that. We would urge the committee to support and take action on this legislation.

If the Committee cannot move forward on H.R. 688, we would suggest raising the outdated "definition" of a MBL from last century's $50,000 to a new 21st century standard of $250,000, with indexing for inflation to prevent future erosion. Furthermore, MBLs made to non-profit religious organizations, made for certain residential mortgages (such as non-owner occupied 1-4 family residential mortgages), made to businesses in "underserved areas" or made to small businesses with fewer than 20 employees should be given special exemptions from the arbitrary cap.

Second, requirements to mail redundant and unnecessary privacy notices on an annual basis should be removed, provided that the credit union's policy has not changed and

additional sharing of information with outside entities has not been undertaken since the distribution of the previous notice. At Bayer Heritage FCU, unnecessary notices cost our institution several thousand dollars a year. NAFCU appreciates the work of Reps. Blaine Luetkemeyer (R-MO) and Brad Sherman (D-CA) in introducing the *Eliminate Privacy Notice Confusion Act* (H.R. 749) to address this issue. As you know, this bill passed the House under suspension of the rules on March 12. We thank the House for its support and are pleased to see that similar legislation has been introduced in the Senate in the form of S. 635.

Third, credit unions should be given greater authority and flexibility in choosing their investments, such as: allowing credit unions to invest in investment grade securities up to 10% of assets; granting credit unions the ability to purchase mortgage servicing rights for investment purposes; and raising the investment limit in Credit Union Service Organizations (CUSOs). These small steps would allow credit unions to better balance and manage their investment options.

Fourth, the NCUA should be given greater flexibility in how it handles credit union lending, such as the ability to establish longer maturities for certain loans. Currently, most loans are statutorily capped at 15-year maturities. Allowing the NCUA to grant longer maturities for certain types of loans will allow credit unions to better offer the loan products that their members desire.

Fifth, Congress should clarify that Interest on Lawyers Trust Accounts (IOLTAs) at credit unions are fully insured. To the extent the FDIC is required to fully insure IOLTA accounts, it is essential for the NCUA's share insurance fund to be treated identically in order to maintain parity between the two federal insurance programs. Congress passed a change to the Dodd-Frank law to clarify the FDIC's ability in this area, but failed to provide parity to credit unions in its last minute action. We urge Congress to correct this mistake and ensure continued parity. The Federal Credit Union Act states that funds held at a credit union are not protected by the share insurance fund unless the person or persons the funds belong to are also members of the credit union. Furthermore, many states require funds held by an attorney for clients to be held in accounts with federal insurance. In addition, IOLTA accounts often contain funds from many clients, some of whom may have funds in excess of the standard $250,000 share insurance limit. IOLTA funds are constantly withdrawn and replenished with new funds from existing and new clients. Accordingly, it is impractical to require attorneys to establish multiple IOLTAs in different credit unions to ensure full share insurance coverage.

Lastly, Congress should make sure that the NCUA has practical requirements on how credit unions provide notice of their federally-insured status in any advertising.

21st Century Data Security Standards

Credit unions are being adversely impacted by ongoing cyber-attacks against the United States and continued data breaches at numerous merchants. The cost of dealing with

these issues hinders the ability of credit unions to serve their members. It should be noted that these breaches are often not just the national breaches that make the evening news, but often are localized breaches that can have a devastating impact on a credit union and its members. A 2011 NAFCU survey of our membership found that these local breaches are often the most costly breaches to an institution. These breaches have led to increased costs to credit unions such as higher insurance costs, higher software costs, higher security costs, higher card reissuance costs and higher staffing costs to deal with data breaches.

Congress needs to enact new 21st century data security standards that include:

- the payment of costs associated with a data breach by those entities that were breached;
- establishing national standards for the safekeeping of all financial information;
- requiring merchants to disclose their data security policies to their customers;
- requiring the timely disclosure of entities that have suffered a data breach;
- establishing enforcement standards for provisions prohibiting merchants from retaining financial data;
- requiring the timely notification of the account servicer if an account has been compromised by a data breach; and,
- requiring breached entities to prove a "lack-of-fault" if they have suffered from a data breach.

Additional Areas Where Relief is Needed

In addition to the five major areas outlined above, there are other areas where Congress should act to provide relief for credit unions and other financial institutions:

- Dodd-Frank Act Thresholds: The thresholds established in the Dodd-Frank Act should be raised and indexed. The Act established $10 billion as an arbitrary threshold for financial institutions being subject to the Durbin interchange price cap and the examination and enforcement of the CFPB. We believe that raising such a threshold would still accomplish the same objectives, while not penalizing the number of "good actors" that have found themselves above the arbitrary $10 billion line but below mega-bank status. At the very least, the $10 billion line should be indexed for inflation on an annual basis – going back retroactively to its establishment.

- E-SIGN Act: Passed in 2000, the E-SIGN Act requires financial institutions to receive consumer consent *electronically* before electronic disclosures can be sent to members. Credit unions cannot accept their member's consent to receive e-statements over the phone or in person, but must instead direct the member to their own personal computers to consent electronically, adding an unnecessary hurdle in this otherwise straightforward process. This outdated provision is a burden for financial institutions and consumers and should be stricken.

- CFPB Document Access: While Dodd-Frank excludes financial institutions with $10 billion or less in assets from the examination authority of the CFPB, the new agency is provided with unlimited access to financial reports concerning covered persons issued by other regulators. Since the reports are drafted by federal agencies as part of their examination procedures, access by the CFPB to the reports essentially amounts to an examination in itself, even for those institutions with assets of $10 billion or less. NAFCU does not believe that this is the result Congress was seeking to achieve, and asks that this broad language be narrowed appropriately.

- Appraiser Independence: Section 1472 of the Dodd-Frank Act imposes mandatory reporting requirements on credit unions and other lenders who believe an appraiser is behaving unethically or violating applicable codes and laws, with heavy monetary penalties for failure to comply. These provisions would impose a significant burden on each credit union to essentially serve as a watchdog for appraisers violating their own professional practices, and should therefore be optional. If reporting continues to be compulsory, NAFCU asks that Congress amend the severe penalties of up to $10,000 or $20,000 per day which we believe to be excessive.

- SAFE Act Definition of "Loan Originator": The S.A.F.E. Mortgage Licensing Act of 2008 required financial institutions to register any "loan originator." While the intent was to record commissioned originators that perform underwriting,

regulators have interpreted the definition very broadly to include any employee accepting a loan application, and even call center staff or credit union volunteer board members. NAFCU asks that Congress narrow the meaning of what it means to "take" an application and to "offer" or "negotiate" terms, which would help prevent credit unions from going through a burdensome process to unnecessarily register individuals not involved in underwriting loans.

- SEC Broker-Dealer Exemption: while the Gramm-Leach-Bliley Act allows for an exemption for banks from broker-dealer and investment adviser registration requirements with the SEC, no similar exception for credit unions is included, even though federal credit unions are permitted to engage in securities-related activities under the FCUA as regulated by NCUA. We ask that credit unions be treated similarly to banks under these securities laws. This would ensure they are not dissuaded from providing services that consumers demand, thereby putting their members at a disadvantage.

Conclusion

Credit unions are suffering under an ever-increasing regulatory burden. This burden is hampering their ability to serve our nation's 94 million credit union members. A NAFCU survey of our members indicates that 94% of respondents have seen this burden increase since the passage of the Dodd-Frank Act in 2010 – despite the fact that everyone agreed during the financial reform debate that credit unions were good actors and did not cause the crisis. This is why during the debate on Wall Street reform that NAFCU did

not support credit unions being included under the CFPB rulemaking and why we still have concerns about them being subject to it today.

It is not one single regulation that is creating this burden, rather the tidal wave of new rules and regulations coming from multiple regulators – often with little or no coordination between them. The burden is compounded as old and outdated regulations are not being removed or modernized at the same pace. This regulatory tsunami has caused all credit unions to need regulatory relief and any relief effort should include all credit unions and not attempt to split the industry.

NAFCU was the first to call on Congress to provide such relief this past February and our five-point plan, outlined in my testimony, provides a good road map to start on any relief package for credit unions.

NAFCU could also support such a package being combined with regulatory relief for community banks, as we believe the regulatory burden is high for all regulated depository institutions. It is important that such a joint effort be balanced between the top needs of both the credit union and the banking industry to create a "win-win" scenario for all.

NAFCU looks forward to working with the Committee on this approach. We thank you for your time and the opportunity to testify before you here today on these important issues to credit unions and ultimately our nation's economy. I welcome any questions you may have.

Attachment A:	**NAFCU letter to Secretary Geithner on FSOC's role to reduce regulatory compliance burden; June 27, 2012.**
Attachment B:	**NAFCU letter to Chairman Johnson, Chairman Hensarling, Ranking Member Crapo and Ranking Member Waters calling on Congress to provide credit union regulatory relief; February 12, 2013.**

National Association of Federal Credit Unions
3138 10th Street North • Arlington, Virginia • 22201-2149
(703) 522-4770 • (800) 336-4644 • Fax (703) 522-2734

Fred R. Becker, Jr.
President and CEO

June 27, 2012

The Honorable Timothy F. Geithner
Secretary of the Treasury
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

RE: FSOC's Role to Reduce Regulatory Compliance Burden on Credit Unions

Dear Secretary Geithner: Secretary Geithner

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's Federal credit unions (FCUs), I am writing to you in your capacity as Chairman of the Financial Stability Oversight Council (FSOC).

As you know, under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act), the FSOC has a duty to facilitate regulatory coordination. This duty includes facilitating information sharing and coordination among the member agencies of domestic financial services policy development, rulemaking, examinations, reporting requirements and enforcement actions. Through this role, the FSOC is effectively charged with ameliorating weaknesses within the regulatory structure, promoting a safer and a more stable system.

In regards to this goal, NAFCU would like to emphasize how important it is to credit unions for our industry's copious regulators to coordinate with each other to help mitigate regulatory burden. As highlighted in the testimony of NAFCU Board Member Ed Templeton before the House Financial Services Committee on May 9, 2012, it is not any single regulation, but the panoply of the regulatory regime of numerous regulators, each operating "within their own lanes" and with minimal, if any, interagency coordination, that not only helps create, but significantly magnifies, today's undue regulatory burden on credit unions and other small financial institutions.

In his testimony, Mr. Templeton, CEO of a small credit union that serves a large number of underserved Americans, emphasized the difficulties facing credit unions to

E-mail: fbecker@nafcu.org • **Web site:** www.nafcu.org

plan ahead and keep pace with the rapid rate of regulatory changes under the Act. As Mr. Templeton testified, 96.4% of credit unions in a NAFCU survey last spring reported that they were devoting more staff time to regulatory compliance than they did in 2008. Consequently, credit unions have not been able to use their resources efficiently as they are devoting far too much time and money on regulatory compliance and related functions; they should be empowered, instead, to expend such time and resources to serving their members.

The array of regulations that are making operating a credit union more and more difficult are being fired simultaneously from multiple directions and by a host of agencies. For example, the Consumer Financial Protection Bureau (CFPB) has issued several rules and is soon expected to propose numerous major rules that would greatly impact credit unions' products and services, including savings, mortgage lending, and credit and debit card services. Concomitantly, the credit union's principle regulator, the National Credit Union Administration (NCUA), is issuing regulations on issues such as concentration and interest rate risk, loan participations, credit union service organizations and appraisal management. At the same time, the Department of Justice is issuing regulations on physical assess to ATMs, while the Department of Labor is issuing regulations on employee rights and the Financial Crimes Enforcement Network (FinCEN) is issuing regulations on currency transaction reports and suspicious activity reports.

As we have approached each agency regarding the ever-increasing regulatory burden, they quickly respond that the rules being issued by other agencies are outside of their purview. NAFCU believes the FSOC is well-positioned to rectify this lack of coordination. In that regard, we ask that you establish within the FSOC robust inter-agency coordination on the issuance of rules impacting financial institutions.

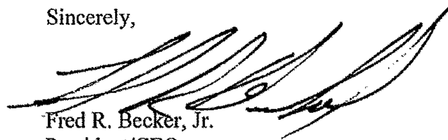
NAFCU also urges the FSOC to establish policy requiring member agencies to conduct and publish a thorough cost-benefit analysis prior to issuing regulations as well as a separate cost-benefit analysis a year after each regulation the agency prescribes and every other year thereafter. Also, a cost-benefit analysis should be conducted every two years on each regulation that an agency has on its books, with the agency required to justify the regulations' continued existence. These cost analyses should be reviewed by the FSOC to assess the total impact on the financial services industry. We strongly believe that conducting such exercises would better instruct regulators of the high cost of compliance, and equip them with the information necessary to assess whether a particular regulation is effective and justifiable.

America's credit unions have long been reliable sources of financial advancement for millions of people. We believe that the FSOC, with your leadership, is in a position to help credit unions and other small financial institutions continue to achieve their mission of serving their members.

Secretary Geithner
U.S. Department of the Treasury
June 27, 2012
Page 3 of 3

NAFCU appreciates your attention to our concerns. Should you have any questions or concerns, please feel free to contact me or Carrie Hunt, NAFCU's General Counsel and Vice President of Regulatory Affairs, at 703-842-2234.

Sincerely,



Fred R. Becker, Jr.
President/CEO

cc: Members of the Senate Banking Committee
Members of the House Financial Services Committee
The Honorable Ben Bernanke, chairman of the Federal Reserve Board
Martin J. Gruenberg, acting chairman of the Federal Deposit Insurance Corporation
The Honorable Richard Cordray, director of the Consumer Financial Protection Bureau
Edward DeMarco, acting director of the Federal Housing Finance Agency
The Honorable Debbie Matz, chairman of the National Credit Union Administration
The Honorable Karen Mills, administrator of the Small Business Administration
The Honorable Hilda Solis, secretary of the Department of Labor
The Honorable Shaun Donovan, secretary the Department of Housing and Urban Development
James H. Freis, Jr., director, Financial Crimes Enforcement Network
The Honorable Julius Genachowski, chairman of the Federal Communications Commission
The Honorable Jon Leibowitz, chairman of the Federal Trade Commission

NAFCU

3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
F: 703.522.2734
fbecker@nafcu.org

National Association of Federal Credit Unions | www.nafcu.org

Fred R. Becker, Jr.
President/CEO

February 12, 2013

The Honorable Tim Johnson
Chairman
Senate Committee on Banking,
Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

The Honorable Michael Crapo
Ranking Member
Senate Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, D.C. 20510

The Honorable Jeb Hensarling
Chairman
House Financial Services Committee
United States House of Representatives
Washington, D.C. 20515

The Honorable Maxine Waters
Ranking Member
House Financial Services Committee
United States House of Representatives
Washington, D.C. 20515

Re: NAFCU Calls on Congress to Provide Regulatory Relief for Credit Unions

Dear Chairman Johnson, Chairman Hensarling, Ranking Member Crapo and Ranking Member Waters:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions, I write today to call for Congressional action during this session of the 113th Congress to enact broad-based regulatory relief that is essential to the credit union industry's ability to serve its 95 million members.

Our nation's credit unions are struggling under an ever-increasing regulatory burden that must be immediately addressed. A survey of NAFCU members late last year found that 94% have seen their regulatory burden increase since the passage of the *Dodd-Frank Act* in July 2010. The regulatory onslaught continues to compound as credit unions now have over 5,000 pages of rules from the Consumer Financial Protection Bureau (CFPB) that they must understand, interpret, and ultimately comply with – despite the fact that Congress has widely acknowledged that credit unions were not the cause of the financial crisis. Credit unions, many of which have very small compliance departments, and in some cases only one compliance officer, must comply with the same rules and regulations as our nation's largest financial institutions that employ armies of lawyers. The impact of the ever-increasing regulatory burden is even more sobering, as the number of credit unions continues to decline. There are nearly 700 fewer credit unions today than there were before the passage of the *Dodd-Frank Act*.

It is with this regulatory onslaught in mind that we call on Congress to enact meaningful regulatory reforms and provide much needed assistance to our nation's credit unions. Over the past year, we have been actively conversing with our member credit unions to identify those areas where regulatory relief is requisite.

Our ongoing discussions with our members have led us to draft a five point plan for credit union regulatory relief:

I. Administrative Improvements for the Powers of the NCUA

We believe there are changes that must be made to strengthen and enhance the National Credit Union Administration (NCUA).

First, the NCUA should have authority to grant parity to a federal credit union on a broader state rule, if such a shift would allow them to better serve their members and continue to protect the National Credit Union Share Insurance Fund.

Second, the NCUA should have the authority to delay the implementation of a CFPB rule that applies to credit unions, if complying with the proposed timeline would create an undue hardship. Furthermore, given the unique nature of credit unions, the NCUA should have authority to modify a CFPB rule for credit unions, provided that the objectives of the CFPB rule continue to be met.

Third, the NCUA and the CFPB should be required to conduct a look-back cost-benefit analysis on all new rules after three years. The regulators should be required to revisit and modify any rules for which the cost of complying was underestimated by 20% or more from the original estimate at the time of issuance.

Fourth, new examination fairness provisions should be enacted to help ensure timeliness, clear guidance and an independent appeal process free of examiner retaliation.

Finally, the Central Liquidity Facility (CLF) should be modernized with changes such as: (1) removing the subscription requirement for membership, and (2) permanently removing the CLF borrowing cap so that it may meet the current needs of the industry.

II. Capital Reforms for Credit Unions

NAFCU believes that capital standards for credit unions should be modernized to reflect the realities of the 21st century financial marketplace.

First, the NCUA should, with input from the industry, study and report to Congress on the problems with the current prompt corrective action (PCA) system and recommended changes.

Second, a risk-based capital system for credit unions that more accurately reflects a credit union's risk profile should be authorized by Congress.

Third, the NCUA should be given the authority to allow supplemental capital accounts for credit unions that meet certain standards.

Finally, given that very few new credit unions have been chartered over the past decade, and in order to encourage the chartering of new credit unions, the NCUA should be authorized to further establish special capital requirements for newly chartered federal credit unions that recognize the unique nature and challenges of starting a new credit union.

III. Structural Improvements for Credit Unions

NAFCU believes there should be improvements to the *Federal Credit Union Act* to help enhance the federal credit union charter.

First, Congress should direct the NCUA, with input from the industry, to study and report back to Congress suggested changes to outdated corporate governance provisions in the *Federal Credit Union Act*. Congress should then act upon those recommendations.

Second, a series of improvements should be made to the field of membership (FOM) restrictions that credit unions face expanding the criteria for defining "urban" and "rural"; and allowing voluntary mergers involving multiple common bond credit unions and allowing credit unions that convert to community charters to retain their current select employee groups (SEGs).

Finally, all credit unions, regardless of charter type, should be allowed to add underserved areas to their field of membership.

IV. Operational Improvements for Credit Unions

Credit unions stand willing and ready to assist in our nation's economic recovery. Our industry's ability to do so, however, is severely inhibited by antiquated legislative restrictions.

First, Congress should show America that they are serious about creating jobs by modifying the arbitrary and outdated credit union member business lending (MBL) cap. This can be done by raising the current 12.25% limit to 27.5% for credit unions that meet certain criteria or by raising the outdated "definition" of a MBL from last century's $50,000 to a new 21st century standard of $250,000, with indexing for inflation to prevent future erosion. Furthermore, MBLs made to non-profit religious organizations, businesses in "underserved areas", or small businesses with fewer than 20 employees should be given special exemptions for the arbitrary cap.

Second, requirements to mail redundant and unnecessary privacy notices on an annual basis should be removed, provided that the credit union's policy has not changed and additional sharing of information with outside entities has not been undertaken since the distribution of the previous notice.

Third, credit unions should be given greater authority and flexibility in choosing their investments.

Fourth, the NCUA should be given greater flexibility in how it handles credit union lending, such as the ability to establish longer maturities for certain loans.

Finally, Congress should clarify that Interest on Lawyers Trust Accounts (IOLTAs) at credit unions are fully insured and also that the NCUA should have practical requirements on how credit unions provide notice of their federally-insured status in any advertising.

V. 21st Century Data Security Standards

Credit unions are being adversely impacted by ongoing cyber-attacks against the United States and continued data breaches at numerous merchants. The cost of dealing with these issues hinders the ability of credit unions to serve their members. Congress needs to enact new 21st century data security standards that include: the payment of costs associated with a data breach by those entities that were breached; establishing national standards for the safekeeping of all financial information; require merchants to disclose their data security policies to their customers; requiring the timely disclosure of entities that have suffered a data breach; establishing enforcement standards for provisions prohibiting merchants from retaining financial data; requiring the timely notification of the account servicer if an account has been compromised by a data breach; and, requiring breached entities to prove a "lack-of-fault" if they have suffered from a data breach.

We have outlined a number of proposals that are necessary to providing the regulatory relief and assistance that credit unions urgently require. The number of credit unions continues to decline on a monthly basis and the ever-increasing regulatory burden the industry is facing is accelerating that decline as compliance costs become even more onerous. It is with that in mind that we call on Congress to act on any and all of these proposals, whether as a comprehensive package, or individually. Our nation's credit unions and their 95 million members desperately need this relief and we call on Congress to enact it.

Thank you for your attention to this important matter.

If you have any questions or would like further information about any of these issues, please do not hesitate to contact me or NAFCU's Executive Vice President of Government Affairs Dan Berger by telephone at (703) 842-2203 or by e-mail at dberger@nafcu.org.

Sincerely,

Fred R. Becker, Jr.
President and CEO

cc: Members of the Senate Banking Committee
Members of the House Financial Services Committee

Chairman Capito, Ranking Member Meeks, Members of the Subcommittee:

Thank you for the invitation to testify in front of the Subcommittee today regarding regulatory burdens on credit unions. I appreciate you taking the time to hear my testimony. My name is Mitch Reiver, and for the past 25 years I have served as General Counsel for Melrose Credit Union in Jamaica, Queens, New York. Melrose Credit Union serves over 24,000 members and has total assets of $1.8 billion.

It is my general assessment that the increasing regulatory burden on credit unions is both misguided and misplaced. Although I recognize the need for appropriate regulation, too often credit unions end up paying the price for abusive practices perpetrated by non-credit union entities. We continue to endure this reality every day as the Consumer Financial Protection Bureau conducts its rulemaking process with the intent of preventing another financial meltdown, but also with the result of burdensome regulations being issued on institutions that did not play a role in causing the crisis. A seemingly unending rulemaking process stemming from the CFPB, coupled with outdated and duplicative regulations already in statute, result in credit unions spending more resources on compliance and less on other services that benefit our membership.

Regulation for the sake of regulating, as opposed to issuing rules with clearly defined intent and realistic effectiveness are two very different approaches. Credit unions require more of the latter – certainty – in order to best serve their members. Today I would like to briefly touch on five topics I believe highlight examples where common sense regulatory relief is needed: recent changes to the Real Estate Settlement Procedures Act; privacy notifications required by Gramm-Leach-Bliley; the effectiveness of Currency Transaction Reports and Suspicious Activity Reports required by the Bank Secrecy Act; examination fairness; and the proposed CFPB rule on remittances.

On the issue of annual privacy notices, I would like to thank Representatives Luetkemeyer and Sherman for their work on H.R. 749, the Eliminate Privacy Notice Confusion Act, which passed the House by voice vote in March. Streamlining annual privacy notices by requiring them to be sent to consumers only when a policy changes is a step in the right direction and is illustrative of the

general premise that consumers can often benefit more from "less". Streamlining privacy notifications in this way will create greater consumer awareness while simultaneously offering some relief to credit unions.

Like all Americans, I too am concerned about the safety and security of our country. While the Bank Secrecy Act is a valuable tool, I have concerns about the effectiveness of its goals relative to the costs and compliance burdens on credit unions and small institutions. Tens of thousands of Currency Transaction Reports and Suspicious Activity Reports are filed by financial institutions. While the issue of what happens once we file is not technically a regulatory burden on credit unions, the cost of compliance is a burden. Smaller credit unions are particularly impacted by the costs of compliance. Identifying and fixing inefficiencies in these reports can help reduce those costs.

For example, it would be helpful to understand more about how the government and law enforcement is using BSA reports, as well as what types of SAR and CTR reports are useful and which are not? BSA compliance burdens disproportionately affect smaller financial institutions, including approximately 3,000 credit unions that have 5 or fewer employees that must comply with BSA and numerous other laws and regulations.

Proposed regulatory changes on BSA also create compliance burdens. I fear that our credit union will expend significant time and costs if the proposed changes on the customer due diligence (CDD) proposal are finalized. Instead of any newly proposed requirements on credit unions, which are among the most heavily regulated with respect to BSA/AML, more focus should be placed on strengthening rules that apply to other types of institutions that are not subject to these strict requirements.

Examination fairness is another are of concern for all credit unions. Melrose is a New York State Chartered credit union, supervised by the New York State Department of Financial Services. The NCUA examines the credit union in its role as the insurer of our shares. It has long been the case that our primary regulator is superseded by the NCUA during what are usually joint exams. For example, at times it appears that the NCUA oversteps the scope of what is supposed to be an insurance review, usually taking refuge under the "safety and soundness" umbrella.

However, in fairness, it does appear that the quality and competence of the NCUA examiners has improved over the years, and while we may not always agree with their findings, they appear to be doing their homework. However, as a State Chartered Credit Union, if the system of dual chartering is to mean anything, the NCUA should defer to our State Regulator, and not the other way around.

While on the issue of examinations I would like to thank Chairman Capito and Representative Maloney for their hard work on examination fairness legislation. Establishing a process for credit unions to share their examination experiences without fear of retaliation is extremely important as well as giving credit unions an opportunity to appeal an examination decision through an independent process.

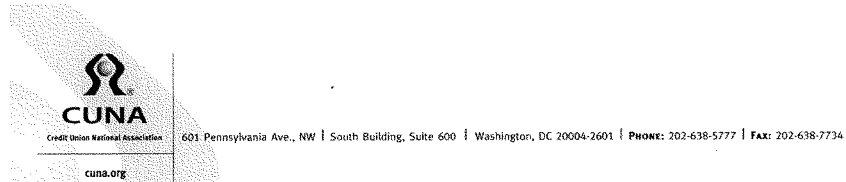
Credit unions are also now faced with virtually impossible new requirements for conducting international remittances. The CFPB's new disclosure requirements for remittances will clearly create a burden on our operations, both in cost and compliance. These new rules will require credit unions to disclose real-time foreign taxes and fees imposed by other financial institutions overseas, information that may not always be readily available or guaranteed at the time of the initial transaction. Many credit unions will forgo offering remittances due to the liability attached to these new requirements. These rules will almost certainly cause many if not all smaller credit unions who still offer remittances to end those services. Remittances are an essential service required in areas across the country with large numbers of foreign born citizens and temporary and permanent residents. They provide a vital monetary lifeline between an individual residing here and his or her family in another country. If these services cease in certain areas, which is very likely under the new rules, the result will be very real on thousands of American families.

Although the CFPB did revise its exemption threshold from 25 remittances per year to 100 per year, this threshold is still much too low to offer any measureable relief for participating credit unions. Some additional changes to the rule that would provide for a more manageable set of requirements include revising requirements for foreign tax and fee disclosures. Instead of credit unions being required to provide information on taxes and fees that are subject to change without their knowledge, they should instead be given the flexibility to provide

disclosure of the highest possible fees and maximum possible taxes the member might incur.

Credit unions strive to provide only the best services to their members. As membership based not-for-profit financial cooperatives, the health and prosperity of a credit union is directly tied to the health and prosperity of each and every one of its members. The more time and resources we spend on complying with a conveyor belt of new and existing rules, the less we can spend on providing quality services to our members. As I mentioned earlier in my testimony, smaller community institutions bear the brunt of the effects of overregulation. Appropriate focus should be placed on efficient and effective regulations that don't place the weight of the burden on smaller institutions.

Chairman Capito, Ranking Member Meeks, I would like to again thank you for inviting me here today for the opportunity to testify on these important issues. I appreciate your due consideration on these matters and for recognizing that regulatory burdens on credit unions not only exist, but are growing. I look forward to progress being made on the issues I raised today. I am happy to answer any questions you may have.



TESTIMONY
OF
PAMELA STEPHENS
PRESIDENT AND CHIEF EXECUTIVE OFFICER
SECURITY ONE FEDERAL CREDIT UNION
ON BEHALF OF THE
CREDIT UNION NATIONAL ASSOCIATION

BEFORE THE
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT
COMMITTEE ON FINANCIAL SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES

HEARING
ON
"EXAMINING CREDIT UNION REGULATORY BURDENS"
APRIL 10, 2013

Testimony of
Pamela Stephens
President and Chief Executive Officer
Security One Federal Credit Union
On behalf of the
Credit Union National Association
Before the
Subcommittee on Financial Institutions and Consumer Credit
Committee on Financial Services
United States House of Representatives
Hearing on
"Examining Credit Union Regulatory Burdens"

April 10, 2013

Chairman Capito, Ranking Member Meeks, Members of the Subcommittee:

Thank you very much for the opportunity to testify at today's hearing. My name is Pamela Stephens, and I am President and Chief Executive Officer of Security One Federal Credit Union, a federally chartered community credit union with total assets of $54 million, headquartered in Arlington, Texas, serving 9,200 members. Our field of membership is individuals who live, work or worship in Arlington or Mansfield, Texas. I am testifying today on behalf of the Credit Union National Association (CUNA), the largest credit union advocacy organization in the United States, representing nearly 90% of America's 7,000 state and federally chartered credit unions and their 96 million members.

Credit unions greatly appreciate the attention that this subcommittee has given to the ever-increasing, never-decreasing regulatory burden that they face. By our count, this is the thirteenth hearing at which credit unions have been asked to testify on this subject since the beginning of 112th Congress. We are heartened to have the opportunity to present ideas and proposals to reduce credit unions' regulatory burden. Credit unions very much look forward to regulatory relief, and to working with you to achieve that relief.

We appreciate the steps that have already been taken towards regulatory relief, including the enactment in the 112th Congress of legislation sponsored by Representatives Luetkemeyer (R-MO) and Scott (D-GA) related to signage on ATM machines, and the passage of legislation in the House earlier this year of legislation sponsored by Representatives Luetkemeyer and

Sherman (D-CA) related to privacy notices. These bills represent steps in the right direction toward reducing regulatory burden for credit unions and other community based financial institutions, and may offer a roadmap for future legislation.

This testimony will describe the current state of regulatory burden credit unions face, efforts on the part of the Consumer Financial Protection Bureau (CFPB) and the National Credit Union Administration (NCUA) to reduce regulatory burden, ongoing concerns with these agencies and the Financial Accounting Standards Board (FASB), and areas where statutory changes could reduce regulatory burden and enhance service to credit union members.

The Crisis of Creeping Complexity

We have come to call what credit unions face in terms of regulatory burden a "crisis of creeping complexity." It is not just one new law or revised regulation that challenges credit unions but the cumulative effect of regulatory changes. This is not a new phenomenon. It has been building for over a decade. It certainly was not simply caused by the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act; however, as the CFPB continues to promulgate and review the regulations under its jurisdiction as required by the Dodd-Frank Act and other statutes now subject to its jurisdiction, there will likely be hundreds of additional changes credit unions will be required to make, notwithstanding the fact that everyone agrees that credit unions did not cause or contribute to the financial crisis.

In testimony before this Subcommittee last May, we noted that credit unions had been subject to over 120 rule changes from 15 different agencies between 2008 and 2012. Since then, 37 additional rules and regulatory changes have been adopted. That is more than one new rule or rule change per month! More regulations are in the pipeline for this year, including additional rules required under the Dodd-Frank Act. All of this despite the fact that credit unions are already one of the most heavily regulated entities in this country and they do not engage in the anti-consumer practices that created the crisis.

The costly and pervasive impact of these rules on credit union operations, a number of which are detailed and complex, covering hundreds of pages, simply cannot be overstated. Because credit unions are financial cooperatives, owned by their members, costs a credit union bears to meet the multitude of wide-ranging regulatory training and compliance responsibilities are ultimately paid by their members. The diversion of funds to pay for compliance may mean

members see lower rates on savings, higher rates on loans, and foregone or reduced services. For some credit unions, it may also result in pressure on earnings.

The burden of complying with ever-changing regulatory requirements is particularly onerous for smaller institutions like mine, because most of the costs of compliance do not vary by size, and therefore proportionately are a much greater burden for smaller as opposed to larger institutions. If a smaller credit union offers a service, it has to be concerned about complying with most of the same rules as a larger institution, but can only spread those costs over a much smaller volume of business. Not surprisingly, smaller credit unions consistently say that their number one concern is regulatory burden. Problems fulfilling regulatory requirements are frequently cited when smaller credit unions seek to be merged.

As the CEO of a small credit union, please allow me to describe some of my real-world, on the ground concerns, starting with the cost of complying with the regulations coming out of Washington, D.C. and Alexandria. Every time a new rule is implemented, we have to evaluate the rule and determine how to comply with it; the regulations themselves are not always clear about how to comply. Once we think we understand what is necessary to achieve and remain in compliance, my credit union has to write new policies and develop appropriate procedures. We have to train our staff and often print new forms. In most cases, these rules are not changing how we offer services to our members – because we do right by our members – but they do affect how much we are able to do for our members. There is no question about it: when a regulation is changed because some bad actor found a new way to take advantage of its customer or because some bureaucrat decided it was time for us to do things differently, it means that I have to divert credit union member resources away from programs and services designed to help members.

Credit unions – and frankly, small banks – did not cause the financial crisis, but we are certainly paying for it. Sadly, many of us cannot afford it. Our credit union certainly cannot afford to keep a staff person dedicated to compliance – my vice presidents and I do the work, and I live in fear that we may not be in compliance. Regulatory burden is one of the prime reasons that there is a significant consolidation taking place in the community financial institution sector. Difficulties in maintaining high levels of member service in the face of increasing regulatory burden are undoubtedly a key reason that roughly 300 small credit unions merge into larger credit unions each year. Small community based financial institutions have an important mission

to help consumers, and I see every day the critical role that credit unions like mine play in the lives of our members, which is why the work you do in terms of providing regulatory relief is so urgent.

We encourage the Subcommittee to continue to exercise its critical oversight function. Closely scrutinize the proposals coming from the CFPB, NCUA and other agencies to ensure that these changes are not only within the intent of Congress but also have minimal adverse impact on the institutions serving Main Street. Ask the regulators how their proposals will impact the delivery of financial services to those they serve. Encourage the CFPB to use its exemption authority to exempt credit unions and other community based financial institutions from regulations designed to reign in the abusive activity of unregulated entities. In many respects, Main Street financial services providers, like credit unions, are consumers' and small businesses' last hope for receiving affordable and fair financial services. This is certainly the case with respect to credit unions because their users are also their owners. When Congress exercises its oversight function, it has been our observation that the rules tend to improve for financial services as well as consumers.

Additionally, we urge Congress to consider the series of statutory changes we are proposing. It has been almost seven years since comprehensive regulatory relief has been enacted by Congress and 15 years since major reforms have been made to the Federal Credit Union Act. There are a number of areas of the Federal Credit Union Act and other statutes that are in need of revision. This testimony makes several recommendations, but certainly does not represent an exhaustive list of the relief that is needed by credit unions and small banks.

Concerns with Respect to the Consumer Financial Protection Bureau

Frankly, the anxiety and the frustration over regulatory burden are often focused, whether fairly or unfairly, on the CFPB. We understand that the CFPB is subject of a great deal of political debate, specifically related to its leadership, structure and funding. The concerns of many credit unions, though, are what will the CFPB do next, what will we have to change to accommodate the new rules, how much will the changes cost and when will the CFPB more fully turn its attention to the unregulated entities in the financial services sector, like certain payday lenders, check cashers, title loan companies and others.

In addition to nine separate rules on mortgages (eight final and one pending) and the remittances rules, the CFPB has already indicated it is considering what steps to take regarding areas such as but not limited to student loans, overdraft protection plans, credit cards, prepaid cards, financial services to various segments of our economy, and data collection. Where will it all end, and what will be the ultimate price that will have to be paid to meet all of these requirements?

To its credit, the CFPB has taken several steps, particularly in the last year, to listen to credit unions' concerns about its rulemaking and to reduce regulatory burden in ways that will benefit credit unions and their members.

While not required to do so by Congress, the agency established a Credit Union Advisory Council, which meets four times a year, and at least half of the meetings may be in person at the CFPB headquarters. Director Richard Cordray has met with the Council in both of its meetings so far. We feel these meetings should be open to public observation as they provide an important forum for credit union representatives to share concerns and provide practical guidance to the agency on operational and public policy issues. Director Cordray and his staff have met on numerous occasions with CUNA President and CEO Bill Cheney and senior CUNA staff and have visited with credit unions and their state leagues around the country. The agency has also held briefing sessions on proposed and final rules that have been very useful. Just last month, the CFPB announced that it is embarking on an initiative to assess the regulatory burdens associated with its regulations.

Despite the fact that we have very significant concerns with some CFPB rulemakings to date and anxieties about others to come, the CFPB has provided a model of outreach and inclusion in addressing issues under the Dodd-Frank Act that other financial regulatory agencies should be required to emulate. Nevertheless, so much more is needed in the areas of regulatory relief, transparency, and accountability, and we encourage the Subcommittee to continue to exercise prudent oversight over the CFPB's rulemakings.

Remittances Regulations

One area of continuing concern for many credit unions is the CFPB's remittances regulation. To its credit, the CFPB has taken a number of steps to listen to stakeholders during –

and after – its rulemaking process. The final and proposed rule included a number of improvements that CUNA and others sought including:

- Eliminating a requirement to disclose state and local taxes imposed on a remittance transfer to a foreign country;
- Providing more flexibility regarding the disclosure of remittance fees imposed by a designated recipient's institution and foreign taxes;
- Limiting liability for transfer providers when a sender provides incorrect or insufficient information regarding a remittance transfer; and
- Delaying the effective date of the remittance transfer rule.

Despite these improvements, credit unions continue to have very significant concerns with the CFPB's remittance proposal. The final rule includes an exemption level that is far too low to be effective. The agency's rule exempts transfer providers with 100 or fewer transfers a year under its authority in the Dodd Frank Act to determine "normal course of business" regarding international remittance transfers. However, 100 transfers per year is equal to approximately 8 transfers per month, or about two a week. We do not think that meets any reasonable notion of what constitutes "normal course of business," particularly since a number of credit unions have as many as 1,000 or more transfers per year, still only four per day. A number of these credit unions do not charge explicit fees to send remittances and some actually lose money in providing these services. There have been absolutely no examples of abuses we have been able to unearth regarding remittance services that credit unions provide. Nevertheless, a number of credit unions are considering exiting the service as a result of the requirements for new disclosures regarding exchange rates, fees, taxes, and the date money will be received (all of which may be difficult to determine), the required thirty minute waiting periods before a transaction can be sent, investigation and error resolution requirements and additional liability.

We urge the Committee to work with the CFPB to revisit the exemption level and allow more credit unions and small banks to qualify for an exemption. To be clear: we are not suggesting consumers who use credit unions should have inadequate disclosures but we believe there is more leeway the CFPB could have used to minimize the costs and impact of this rule, particularly for not-for-profit credit unions and their members. Some credit unions that are trying to continue to offer international remittance services have told us they have been informed by their third party vendors, including large banks, that assist operationally in making the transfer, that they cannot meet the requirements of the rule this year. In fact, my credit union had

entered into a contract with a remittance services provider before it announced that it planned to exit the service because it could not comply with the new regulation; we have since entered into an arrangement with another provider.

We have raised these concerns with the CFPB but they also need to be addressed very quickly. The compliance date for the remittance rule, expected to be effective in the coming months, has not yet been set; however, if the final rule is implemented, the result may be that the remittance transfer service providers which created problems for consumers will be the only ones left in the market. We appreciate the Subcommittee's attention to this matter.

Mortgage Regulations

Credit unions are also justifiably concerned about a number of the CFPB's mortgage rules, including the ability to repay rule, the mortgage loan origination rule, and the mortgage servicing rules.

During the development of the "Ability to Repay" rule, there were a lot of concerns the rule would be too stringent for creditors, but the agency's work on this rule has been generally commended. The regulation sets standards for a qualified mortgage, which will afford a "safe harbor" of legal protection to creditors providing qualified mortgages (QMs), if a borrower sues the creditor for noncompliance with the ability to repay provisions. The rule provides a "rebuttable presumption" that compliance is sufficient even for loans which are not QMs, an approach CUNA strongly supported. Also, the rule permits certain institutions to have some flexibility in structuring mortgages while retaining important legal protections.

However, we believe more consideration should be given to exercising greater exemption authority from the ability to repay rules for credit unions because their mortgages are already subject to ongoing scrutiny from their prudential regulators and our institutions have not engaged in unscrupulous mortgage lending practices. Furthermore, we have concerns that the prudential regulators or the secondary mortgage market will require or favor QMs so much that it will be difficult for non-QM-qualifying borrowers to obtain a mortgage going forward. In CUNA's conversations with Director Cordray, he has assured CUNA that this is not the intent of the CFPB, but we urge the Subcommittee to work with the prudential financial regulators and the Federal Housing Finance Agency, to address this concern.

The mortgage loan originator compensation rule contains a requirement that beginning June 1, creditors must refrain from adding credit-related insurance to the monthly balance of a covered mortgage loan. A number of credit unions are concerned that their vendors will not be able to make processing changes in sufficient time to meet the June compliance date, and we hope to work with the Subcommittee and the CFPB to achieve some leeway on this issue.

Credit unions also have significant concerns regarding the CFPB's mortgage servicing rules. We recognize and appreciate the CFPB's inclusion of a small servicer exemption, for those servicers that service 5,000 of fewer mortgage loans and service only mortgage loans that they or an affiliate originated or own. However, we do not believe that the exemption is flexible enough. For example, a credit union that would otherwise be exempt, but services even one loan for Habitat for Humanity at no cost, will be covered by the rule and subject to the range of periodic statement, rate adjustment notice, error resolution, delinquent borrower assistance and other requirements that apply to huge servicers.

We are also concerned with a requirement that creditors wait more than 120 days after a mortgage loan account is delinquent to begin foreclosure procedures. All of these requirements make sense for entities that were taking advantage or abusing consumers in the mortgage servicing process. However, credit unions do not abuse their members and they retain a significant portion of their mortgage loans in portfolio. Even if they sell their loans, they generally retain the servicing of the loans to ensure their members are treated well throughout the life of the loan. Credit unions want to work with their members to avoid adverse consequences, including foreclosure, and take steps to contact the borrower and restructure the debt if possible. If foreclosure is ultimately necessary, it is not a surprise to the credit union borrower. In such a case, delaying the beginning of what can be a very cumbersome foreclosure process for over 120 days, when the credit union had been working all along with the borrower to keep the loan or modification on track, is needlessly burdensome for the credit union's other members, since the costs of dealing with the loss to the credit union associated with the foreclosure are ultimately borne by the others who belong to that credit union.

We urge the Subcommittee to work with the CFPB to consider modifications to the exemption that will make it more meaningful for small servicers, such as credit unions, and to provide reasonable flexibility on error resolution and information request requirements, and to consider accommodations with respect to the 120 day waiting period for servicers, like credit

unions, that have been working with borrowers prior to the commencement of the foreclosure process.

Exemption Authority

Credit unions wonder why they and their members are being forced to pay the price of new Dodd-Frank Act regulations when, as so many policymakers have said, credit unions did not cause the financial crisis and they are not part of the problem. Since credit unions are not a part of the problem, why cannot the CFPB do more to exempt credit unions from new requirements and focus its attention on the abusers of consumers?

Congress has conveyed exemption authority to the CFPB, and we believe that Congress should ensure that the CFPB is more proactive in its use of this authority as it pertains to credit unions in light of the fact that credit unions seek to avoid abusive practices and did not cause the financial crisis. Attached to this testimony is a memorandum to CUNA that addresses the CFPB's extensive exemption authority. The Subcommittee should encourage the CFPB to use its exemption authority for credit unions to the greatest extent possible.

Concerns With Respect to the National Credit Union Administration

As with the CFPB, our credit unions' experiences with the NCUA have been a mix of positive steps to address regulatory relief and ongoing concern with the potential for regulatory overreach.

To its credit, last year, the NCUA established a working group comprised of credit union officials to discuss concerns about the regulation of troubled debt restructurings. NCUA used the feedback from credit unions, CUNA and others, to develop a new rule that was adopted in May 2012 to facilitate the ability of credit unions to work with their members to structure loan modifications so that affected, qualified borrowers can remain current on their loans.

NCUA has taken other steps to provide regulatory relief such as:

- Raising the definition of small credit unions to $50 million so that more credit unions would be able to meet reduced requirements where safety and soundness concerns are not raised.
- Expanding the definition of "rural district' so that more consumers in nonurban areas can be part of a credit union.
- Improving the application process to ensure qualified state and federal credit unions know of their eligibility to be designated as a low income credit union,

which under the Federal Credit Union Act, are not subject to certain member business loan and net worth restrictions.

- Allowing federal credit unions to invest in Treasury Inflation Protection Securities (TIPS).

The agency is also considering allowing well-managed, well-capitalized federal credit unions to use simple derivatives to hedge interest rate risks, a move that CUNA strongly endorses.

Credit unions remain concerned, however, that the agency is developing too many rules under the guise of safety and soundness at a time when the credit union system is performing very well. As of year-end, credit unions' financial performance remained very positive; earnings were at record levels; the system's net worth ratio level was around 10.4%; delinquencies continued to fall to 1.2%; and, lending rose 4.6%.

Despite this very strong performance, the agency is pursuing rules on loan participations, which historically have facilitated robust lending by allowing credit union to sell loans and loan packages; emergency liquidity, which would preclude the Federal Home Loan Banks from serving as a source of emergency liquidity for credit unions; and, credit union service organizations (CUSOs), which are not under the agency's legal purview as directed by Congress and because these entities are creatures of state law.

The agency has also indicated it is looking into new risk-based net worth requirements. We welcome this review and want to work with the agency on it.

Credit unions have also raised concerns about examination issues. In a recent survey of our members regarding examination issues, 60% of the 1,500 respondents indicated they had a favorable experience with their last state or federal examination; however, 25% of respondents indicated their last examination experience had been unfavorable. CUNA is reviewing these findings and will be using the information from the survey to continue pressing for improvements in the examination process to make it fairer and more balanced for credit unions.

The issue of examination appeals at NCUA remains an ongoing concern. We urge the Committee to impress upon prudential regulators the need to ensure examinations are well-balanced, that examination findings are reasonable and appropriate, that examiners conduct themselves in a professional manner throughout the review process, and that the appeals process be meaningful and timely.

In addition to these issues, credit unions remain concerned about the lack of oversight regarding NCUA's budget. At a time when other regulators have cut their budgets, the NCUA budget has increased significantly since 2009. In that year, the budget increased 12.1%; in 2010 it was up by 13%; in 2011, it increased by 12.2%; and in 2012, the budget grew by 5.1%. This year, the NCUA increased its budget 6.1%. Credit unions take the oversight of the agency's budget very seriously because they fund most of the agency's operations, with the exception of the Community Development Revolving Loan Fund.

Between 2001 and 2008, the NCUA conducted an open public hearing on its budget; this meeting afforded stakeholders with an opportunity to raise concerns or issues with the NCUA directly. Since that practice ended, the agency's budget has increased significantly, as we have noted. We support the reinstatement of annual NCUA hearings on the budget and we urge the Subcommittee to join us in endorsing this effort which will provide increased accountability for the agency's budget process.

Finally, we have concerns that NCUA has inappropriately applied certain rules, under the guise of safety and soundness, to state chartered federally insured credit unions. While NCUA has an important role to play in ensuring the safety and soundness of the National Credit Union Share Insurance Fund (NCUSIF), we are concerned that the agency's efforts to tie access to federal insurance for state credit unions to strict compliance with its rules unduly compromises important principals of dual chartering and the ability of state supervisors to regulate their agencies. As we describe elsewhere in our testimony, CUNA supports an amendment to the Federal Credit Union Act that would expand the size of the NCUA Board to five members and designate one seat on the Board for a state credit union supervisor. This would go a long way toward helping to address concerns about dual chartering.

Concerns With Respect to the Financial Accounting Standards Board

While we understand that Congress is loath to set accounting standards, we would like to bring to the Subcommittee's attention our concern with a proposal from FASB related to the way financial institutions and other entities report credit losses.

Under the proposal, expected credit losses would not only be estimated based on past events and current conditions as under GAAP now, but creditors would also be required to take into account "reasonable and supportable forecasts" about future events that could affect the

performance over the life of the asset. Credit unions are concerned that the proposal, if adopted, would mean they will have to significantly and immediately increase their allowance for loan and lease loss accounts (ALLL) and that making accurate forecasts of future events would be extremely problematic. This proposal would essentially require lenders to estimate losses over the life of the loan, and to book the entire present value of those losses at the time of origination, even though the income from the loan would only be earned over its life. Because credit unions are not publicly traded, there would be very little use for this information by consumers or by credit union regulators.

This proposal is open for comments through May 31. CUNA has met with FASB and is urging that this proposal not be applied to credit unions. We urge the Subcommittee to support relief for credit unions from the impact of the FASB rule.

Recommendations for Statutory Changes and Reports

We have several recommendations that we urge the Subcommittee to consider, and present our recommendations in six categories: highly important Federal Credit Union Act amendments, proposals designed to address the credit needs of credit union members who own small businesses, other Federal Credit Union Act amendments, improvements to the Dodd-Frank Act, other regulatory improvements, and studies.

First and foremost, we encourage Congress to reform credit union capital requirements by permitting them to accept supplemental forms of capital and to increase the member business lending cap.

Understanding that the Subcommittee is looking for more specific regulatory relief proposals, we encourage Congress to take several steps in the area of enabling credit unions to serve their business lending members even better by enacting legislation to:

- Treat Non-Owner Occupied One to Four Family Dwelling Loans as Real Estate Loans
- Increase the De Minimus Business Loan Amount
- Encourage Small Business Development in Underserved Urban and Rural Communities
- Fully Exempt Government Guaranteed Business Loans from Member Business Lending Cap
- Enable Full Credit Union Participation in the Section 504 Program
- Provide NCUA with Regulatory Flexibility for Small Business Lending

- Exclude Member Business Loans Made to Non-Profit Religious Organizations from the Member Business Lending Cap

We have also identified several areas of reform and improvement to the Federal Credit Union Act. Some of these proposals have been passed by the House of Representatives in previous Congresses. Our proposals would:

- Clarify Share Insurance Coverage of Certain Trust Accounts
- Modernize the National Credit Union Administration Board
- Clarify that All Federal Credit Unions Are Eligible to Serve Underserved Areas
- Permit Net Worth Restoration Plan Flexibility during Disasters
- Enhance Federal Credit Union Investments in Securities
- Increase Investment Limit in Credit Union Service Organizations
- Eliminate the Numerical Limitation of Employee Groups in Voluntary Credit Union Mergers
- Protect Membership When Credit Unions Merge With or Convert To A Community Credit Union
- Provide Federal Credit Unions with Additional Governance Flexibility
- Permit NCUA Additional Flexibility to Respond to Market Conditions
- Permit Privately Insured Credit Unions to Join Federal Home Loans Banks
- Increase the Maturity Limit for Higher Education Loans Made by Federal Credit Unions
- Require NCUA to Hold an Annual Open Hearing on its Budget

The Dodd-Frank Act deserves careful attention for many reasons; we have put forward a small number of suggestions that would:

- Improve Coordination between the CFPB and the NCUA
- Codify the Credit Union Advisory Council
- Require SBREFA Panels for all CFPB Rules

In addition to improvements to the Federal Credit Union Act and the Dodd-Frank Act, we encourage Congress to:

- Improve Regulation D With Respect to Automatic Transfers from Savings to Checking Accounts
- Reduce the Loan Loss Reserve Requirement of SBA's Microloan Program
- Require an FSOC Assessment of the Unintended Consequences of Accounting Standards on Private Entities
- Enact Examination Fairness Legislation

Finally, there are several areas that require additional study and consideration. Some of our study proposals could be accomplished without an act of Congress; others likely would require Congress to take action. Specifically, we encourage Congress to:

- Direct the Treasury Department to Study the Credit Union Examination Appeals Process
- Direct the GAO to Study NCUA's Use of Authority to Deviate from Generally Accepted Accounting Principles (GAAP)
- Order Additional Studies on Cost-Benefit Analysis of Rulemakings that Affect Credit Unions
- Direct the GAO to Study the Cumulative Regulatory Burden Facing Credit Unions and Small Banks
- Direct the GAO to Study the Impact of Supervisory Actions on the Vitality of Community Based Financial Institutions
- Direct the NCUA to Report on its Activities that Promote Dual Chartering of Credit Unions

Highly Important Federal Credit Union Act Amendments

Reform Credit Union Capital Requirements

Capital is king for all financial institutions. Credit unions are the only depository institutions with a statutory leverage requirement and they have the most restrictions on how capital may be obtained of any type of depository institution in the United States. By law, credit unions are required to maintain a net worth ratio of at least 7% in order to be considered well-capitalized for the purposes of the prompt corrective action (PCA) regime. Leverage requirements for other regulated financial institutions in the US are established by regulation, and since the inception of the credit union statutory leverage requirement, the corresponding leverage requirements mandated by regulation for banks and thrifts have been lower.

The law also specifies that only retained earnings constitute net worth for credit unions. Credit unions are the only type of depository institution in the United States without the ability to issue some form of capital instrument to augment retained earnings to build capital. Unfortunately, retained earnings often cannot keep pace with asset growth, meaning that healthy growth can dilute a credit union's regulatory capital ratio and result in nondiscretionary supervisory action under PCA rules. In addition, during periods of financial stress, when credit unions might suffer losses that erode capital, their only alternative in the short run is to reduce

asset size, which requires discouraging deposits or, in some cases, turning away deposits, in order to keep net worth ratios at well-capitalized levels.

This effect was evident during the recent financial crisis and its aftermath. Credit unions in the areas of the country most affected by the bursting of the real estate price bubble (California, Nevada, Arizona and Florida, often referred to as the "sand states") saw sharper reductions in net income than in the rest of the country. To counteract the effect of that reduced net income on capital ratios, credit unions in the sand states cut back on account promotions and reduced interest rates on deposits more than in the rest of the country, to discourage deposit growth. From the beginning of 2008 to the end of 2010, total deposit growth at all credit unions in the sand states was only 4.7% compared to 28% in the rest of the country. At the very time that credit union members, also feeling the effects of the recession on their household finances, were looking to credit unions for support, credit unions were faced with the necessity to hold back their growth to preserve their capital ratios because they lacked access to supplemental capital.

As credit unions continue to recover from the Great Recession, they will need to raise capital ratios at a time when the outlook for credit union net income – the source of retained earnings – is not particularly strong. Net interest income – the difference between what credit unions earn in interest on loans and investment and what they pay on interest and dividends on savings has been on a long-term downtrend caused by the compression of market interest rates toward zero and by intense competition on both sides of the balance sheet. This pressure is unlikely to abate significantly in the near term. In addition, interchange income, an important source of non-interest revenue for credit unions, has been under pressure as a result of the debit interchange provision included in the Dodd-Frank Act, and is likely to diminish. Given the headwinds facing credit union earnings, a number of credit unions and their members may face a protracted period of reduced member service, disadvantageous member pricing and very slow growth, unless Congress allows credit unions to access supplemental forms of capital.

Representatives Peter King (R-NY) and Brad Sherman (D-CA) have introduced the Capital Access for Small Businesses and Jobs Act (H.R. 719) which would empower the NCUA to authorize well-managed credit unions to access supplemental forms of capital. The legislation establishes a set of limitations to ensure that that the supplemental capital instruments would enhance credit union safety and soundness and remain consistent with credit unions' cooperative

structure. The legislation specifically states that credit unions could only access supplemental capital instruments that: (1) do not alter the cooperative nature of the credit union; (2) are subordinate to all other claims against the credit union, including the claims of creditors, shareholders, and the National Credit Union Share Insurance Fund; (3) are available to cover operating losses in excess of retained earnings and, to the extent so applied, will not be replenished; (4) if they have a stated maturity, have an initial maturity of at least five years, and their inclusion as net worth may be discounted at the Board's discretion when the remaining maturity is less than five years; (5) are subject to disclosure and consumer protection requirements as determined by the Board; (6) are offered by a credit union that is sufficiently capitalized and well-managed, and (7) are subject to such rules and regulations as the Board may establish.

Allowing credit unions to access supplemental forms of capital in the manner proposed by H.R. 719 would enhance the safety and soundness of the credit union system by providing an additional buffer against operating losses and against claims on the NCUSIF. Both state (NASCUS) and federal (NCUA) credit union regulators support access to supplemental capital.

Increase the Credit Union Member Business Lending Cap

We appreciate the fact that we have had several opportunities over the last ten years to testify in support of legislation to allow business lending credit unions to continue to serve their small business-owning members. The current cap on business lending essentially prohibits a credit union like mine from entering the market. If my credit union engaged in business lending, my cap would be about $6.5 million; the cost of hiring an experienced business lending staff does not make sense for me when that operation would have to shut down soon after it became successful. That is just what the business lending cap does – it discourages credit unions from successfully serving their members. If a credit union has entrepreneurs in its membership who need access to credit, why should the law prevent the credit union from serving them? After all, that is why credit unions were founded in the first place!

Representatives Ed Royce (R-CA) and Carolyn McCarthy (D-NY) have introduced the Credit Union Small Business Jobs Creation Act (H.R. 688), which would permit well-capitalized, business lending credit unions that have been operating near the current member business lending cap to apply to the National Credit Union Administration for the ability to lend

up to 27.5% of their assets to small businesses. We estimate that this bill would allow credit unions to lend an additional $13 billion to small businesses in the first year, helping them to create 140,000 new jobs.

We are well aware of the objection to this legislation that the banks have made, and while we do believe – and have demonstrated repeatedly – that their arguments are folly, we know this is not the time or place to argue the matter. Still, they have focused much of their efforts on claiming that the Royce-McCarthy legislation would impact only a small number of credit unions. I would suggest that if the Royce-McCarthy bill were to become law, more credit unions like mine would offer business loans to our members because we would see a path to having a viable and successful business lending program. And, I would also suggest that credit unions like mine are precisely the type of institutions Congress should want lending to small businesses because we know our members, we understand our communities, and we operate safely and soundly. I urge Congress to allow credit unions to more fully serve their members, including their small business members.

Provisions Addressing the Credit Needs of Credit Union Members Who Own Small Businesses

Even though we know there is broad and deep bipartisan and bi-cameral support for increasing the credit union member business lending cap as Representatives Royce and McCarthy have proposed, we are mindful that the process the committee is pursuing involves more targeted regulatory relief proposals. Therefore, we suggest the consideration of several smaller-impact proposals that would facilitate credit union service to their small business-owning members, without causing negative consequences for small banks. Some of these proposals have previously passed the House of Representatives.

Treat Non-Owner Occupied One to Four Family Dwelling Loans as Real Estate Loans

As part of the Credit Union Membership Access Act (CUMAA), which imposed the cap on credit union member business lending, Congress included a provision designating loans made by credit unions for non-owner occupied one-to-four family dwellings as business loans, making these loans subject to the member business lending cap. However, if this type of loan is made by a bank, it is treated as a residential loan. We encourage Congress to enact legislation that treats

these types of loans when made by credit unions as residential – not business – loans. While it would not have nearly the impact of increasing the credit union member business loan cap, it would give credit unions that are actively managing the cap additional capacity to serve their members with modest rental real estate holdings, and it would bring regulatory parity to the treatment of these types of loans.

Increase the De Minimus Business Loan Amount

The Federal Credit Union Act exempts from the member business lending cap business loans a borrower or an associated member that has a total of all such extensions of credit in an amount equal to less than $50,000. The de minimus amount has not been adjusted, nor indexed for inflation since 1998.

We encourage Congress to significantly increase the de minimus amount of a credit union business loan and permit the NCUA to adjust this amount no more than once per year to account for the effects of inflation. As with the proposal related to one-to-four non-owner occupied dwellings, increasing the de minimus amount would provide credit unions that today are actively managing the credit union member business lending cap the ability to continue to serve their members. We note that the FDIC considers a loan made to a business by a bank a small business loan if it is less than $1 million.[1] Increasing the de minimus to $500,000 and indexing that amount to take into consideration the effects of inflation would ensure that the loans exempted from the cap are truly small business loans and that the de minimus level, which has not been adjusted in 15 years, keeps up with economic conditions. Even though these loans would not count against the member business lending cap, we do not object to the NCUA having the authority to regulate them for safety and soundness considerations as if they were business loans.

Encourage Small Business Development in Underserved Urban and Rural Communities

In 2008, the House of Representatives passed legislation, H.R. 6312, the Credit Union, Bank, and Thrift Regulatory Relief Act, which included a provision that would have exempted from the credit union member business loan cap a loan made to a business operating in an

[1] Federal Deposit Insurance Corporation. Call Report Instruction Book. Schedule RC-C, Part II. Loans to Small Businesses and Small Farms. RC-C-30.

underserved area. The language envisioned underserved areas as including New Market Tax Credit low-income community areas and Community Development Financial Institution investment areas. We would encourage the Subcommittee to revisit this language, which passed the House of Representatives by voice vote.

Fully Exempt Government Guaranteed Business Loans from Member Business Lending Cap

Under current law, the guaranteed portion of a business loan made through a government-guaranteed loan program is exempt from the credit union member business lending cap. Many credit unions participate in the Small Business Administration programs, including the 7(a) loan program. At the end of 2012, there were 347 credit union SBA lenders – collectively they reported $920 million in SBA loans outstanding in 8,142 individual loans (the average credit union SBA loan size is thus roughly $100,000). In dollar terms, SBA loans are equal to about 2% of total MBLs at credit unions. Since December 2008, the number of SBA loans outstanding has grown by 89% at credit unions throughout the nation.

To encourage greater credit union participation in the 7(a) program and to help SBA-lending credit unions have additional capacity to manage the credit union member business lending cap, we encourage Congress to enact legislation that fully exempts loans made through the 7(a) program from the business lending cap. We appreciate that Representative Nydia Velazquez (D-NY) has in the past introduced legislation to this end, and we hope that we can work with her and others on this issue.

Enable Full Credit Union Participation in the Section 504 Program

To facilitate credit union participation in the SBA's 504 loan program, we encourage Congress to enact a technical change that would permit credit unions to participate in government guarantee loan programs on the terms set out in the regulations governing those programs. Section 107(5)(A)(iii) of the Federal Credit Union Act authorizes federal credit unions to make loans secured by the insurance or guarantee of, or with advance commitment to purchase the loan by, the Federal Government, a State government or any agency of either may be made for the maturity and under the terms and conditions specified in the law under which such insurance, guarantee, or commitment is provided. The regulations governing the 504 loan

program permit lenders to take certain action that would otherwise be prohibited for federal credit unions under the Federal Credit Union Act. For example, the Federal Credit Union Act prohibits federal credit unions from imposing prepayment penalties; however, prepayment penalties are permitted by the regulations governing the 504 loan programs. We believe that federal credit unions participating in the 504 loan program should be able to exercise the same powers as other lenders participating in the program, consistent with the regulations of the program. We encourage Congress to enact a technical amendment in this regard, noting that the House of Representatives passed this provision as part of the Credit Union, Bank, and Thrift Regulatory Relief Act of 2008.

Provide NCUA with Regulatory Flexibility for Small Business Lending

One of the consequences of having credit unions' capital ratios hardwired into statute is limitations on permissible activity based on capital level also get hardwired into law under certain circumstances. A credit union is considered well capitalized when its net worth ratio is greater than 7%; it is considered adequately capitalized when its net worth ratio is between 6% and 7%. Under current law, a credit union must cease business lending if their capital levels fall below 6%. However, because of credit unions' capital structure, there may be circumstances under which an otherwise healthy credit union would dip below the adequately capitalized level. For example, for a small credit union, an unexpected and large influx of deposits would reduce the credit unions' capital levels. In these cases, it would be beneficial for the NCUA to have regulatory flexibility to allow the credit union to continue to lend, in order to support retained earnings growth to raise the credit union's net worth ratio. We encourage Congress to give the NCUA flexibility to permit a credit union to continue to lend to small businesses if its capital ratio drops below the level considered to be adequately capitalized.

Exclude Member Business Loans Made to Non-Profit Religious Organizations from the Member Business Lending Cap

A handful of very experienced credit unions specialize in making loans to non-profit religious organizations; and these loans are some of the safest loans written today. However, the member business lending cap constrains these credit unions' ability to serve this market, notwithstanding that the credit unions that originate this lending are generally exempt from the

member business lending cap under the grandfather provision enacted in 1998. The reason the cap affects these credit unions is that it is normal course of business for these credit unions to sell participations of these loans to other credit unions that would be subject to the member business lending cap. Exempting these loans from the cap would permit other credit unions to purchase participations in these relatively safe loans without their part of the loan counting against the cap. The only change in the treatment of these loans we are proposing affects the treatment under the cap. The participating credit union would still do the necessary underwriting for their portion of the loan; and the loan would continue to be regulated as a business loan, but exempting it from the cap would add another investment option for credit unions and help credit unions spread the risk associated with these loans.

We encourage Congress to enact legislation to exempt member business loans made to non-profit religious organizations from the member business cap. Over the last ten years, there have been several proposals to exempt these loans from the member business lending cap. In fact, the House of Representatives passed legislation that included this proposal in 2006 and 2008. We appreciate the leadership shown by Representatives Ed Royce (R-CA) and Corrine Brown (D-FL) through their sponsorship of this legislation, and we encourage Congress to enact this legislation.

Other Federal Credit Union Act Improvements

Clarify Share Insurance Coverage of Certain Trust Accounts

Members of federally-insured credit unions have similar deposit insurance coverage as customers of federally-insured banks. In fact, the Federal Credit Union Act directs the NCUA, which administers the NCUSIF, to provide coverage that is on par with the FDIC.[2] However, the NCUSIF does not provide equal insurance treatment for certain types of accounts that are similar to accounts held by bank customers and insured by the FDIC, including Interest on Lawyer Trusts Accounts (IOLTAs) and prepaid debit card master accounts.

An IOLTA is set up by an attorney as an escrow account containing pooled client funds, with the interest on the funds going to support legal services for the poor. In NCUA legal

[2] 12 USC 1787(k)(1)(A)

opinion letter 96-0841, the agency stated that the client continues to own the money and that the attorney is only serving as a custodial agent. Therefore, membership status (in the credit union) of the client(s), as the owner(s) of the funds, and not that of the attorney or IOLTA administrator, determines whether the IOLTA account can be maintained by the credit union and whether it is insurable. Generally speaking, in order for the attorney to maintain an IOLTA account at a credit union, all of the clients whose funds would be deposited must be members of the credit union. Federal credit unions that are designated as "low income" face fewer restrictions in setting up IOLTA accounts since they are allowed to accept non-member funds.

Another deposit insurance issue arises with prepaid debit card master accounts at banks and credit unions. The funds attached to most general purpose reloadable (GPR) cards issued by banks and credit unions are typically held in aggregate accounts at the issuing financial institution, not in individual accounts. The deposit insurance coverage for such GPR cards vary widely depending on the card program's structure and credit union member and bank customer awareness of such coverage, if it exists and in what amount, also varies widely among banks and credit unions.

CUNA believes that authority added to the Federal Credit Union Act in 2006 should permit NCUA to extend IOLTA deposit and "pass-through" share insurance on par with FDIC-insured institutions; however, NCUA has not been willing to extend share insurance coverage to these accounts. There is no public policy reason for deposit insurance purposes to distinguish credit union IOLTA accounts from those insured by FDIC.

CUNA supports clear disclosures regarding whether a GPR prepaid card offers insurance on its underlying funds, whether through the NCUSIF or the FDIC. However, pass-through insurance should not be required for all GPR prepaid cards. Imposing such a requirement would likely increase costs for providers and reduce the accessibility of prepaid cards for consumers.

Modernize the National Credit Union Administration Board

While it may seem counter-intuitive for a regulated entity to propose increasing the size of the body that regulates it, CUNA encourages Congress to consider significant reforms to the size and composition of the National Credit Union Administration Board of Directors. Currently, the NCUA Board is composed of three full time members appointed by the President of the United States and confirmed by the Senate; no more than two board members can be from

the same political party; each member serves a staggered six-year term; and no more than one member may be, or recently have been, involved in any insured credit union as a committee member, director, officer, employee or other institution-affiliated party.

Three problems exist with this structure. First, when a Board member resigns or his term expires, an often lengthy and politically challenging process begins to fill the vacancy; while the challenges of confirmation are not unique to the credit union system, it is not unusual for this process to take more than a year. This deprives the Board of expertise and can concentrate all decision-making power with the one or two seated Board members. There has been an occasion within the last ten years were there were two simultaneous vacancies on the board, leaving the Chairman as the only board member. This is an unhealthy situation for effective governance of a system comprised of 7,000 credit unions, with over $1 trillion in assets and 96 million members. There is presently one vacancy on the Board with another Boardmember's term expiring in August. Congress intended for credit unions to be regulated by a Board, similar to the FDIC Board, not a single regulator like the Comptroller of the Currency. Enlarging the Board to five members would alleviate this situation.

Second, there is currently no stipulation in law that any of the Board members have relevant experience and familiarity with state-chartered credit unions, or an appreciation for the important supervisory role that state credit union regulatory have. The absence of board members with state-chartered credit union experience deprives the NCUA Board and staff of qualified perspective with respect to state-chartered institutions and the importance of the dual chartering of credit unions. It also fails to protect state-chartered credit unions from regulatory overreach on the part of the federal regulator which is also the insurer of nearly all state-chartered credit unions. Designating a seat on the NCUA Board for a state credit union regulator would lead to better regulation and enhance the safety and soundness of the entire credit union system.

Third, under current law, only one member of the Board can have recent credit union experience; no similar limitation exists on the FDIC Board with respect to bank experience. This restriction limits the pool of candidates the President may choose from in filling Board vacancies. Excluding candidates based on such recent experience robs the NCUA Board of talented and experienced professionals who would have real-world insight into the effects of Board actions.

We believe credit unions deserve a world-class regulator comprised of Board members who have a deep and thorough understanding of the credit union system. We encourage Congress to consider expanding the size of the NCUA Board from three to five, dedicate one of those seats for a state credit union regulator, and eliminate the restriction that no more than one Board member can have experience with credit unions. Such action would help maintain independence, retain needed expertise, and enable continuity of leadership. It is worth noting that the Government Accountability Office has recommended NCUA Board expansion in the past.[3] We understand that these changes may increase costs at the agency; however, we believe that any increase should be nominal relative to the size of the agency's budget. Further, we believe there are opportunities for the agency to reprioritize its budget to accommodate these changes without significantly increasing the costs borne by credit unions.

Expand Credit Union Service in Underserved Areas

Providing access to credit and promoting thrift are the key goals of credit unions, and the reason that they exist in the market place. Congress should encourage credit unions to reach out and serve underserved communities, not prohibit them from doing so. CUMAA included language intended to clarify that all federal credit unions may apply to NCUA to add underserved areas to their field of membership. But the wording was challenged in court by banking trade groups in 2006, and as a result NCUA discontinued underserved area expansions for credit unions that would like to reach potential members who are not being served adequately.

In 2008, the House of Representatives approved legislation (H.R. 6312) that included a compromise provision that would have enhanced the ability of credit unions to assist underserved communities with their economic revitalization efforts. Specifically, the provision would have provided all federal credit unions with an equal opportunity to expand services to individuals and groups working or residing in areas that meet the income, unemployment and other distress criteria identified by the Treasury Department. The bill's definition of a qualified underserved area included areas currently eligible as "investment areas" under the Treasury Department's Community Development Financial Institutions (CDFI) program, as well as census

[3] Government Accountability Office. Credit Unions: Reforms for Ensuring Future Soundness. GAO/GGD-91-85 (Washington, D.C.: Jul. 10, 1991), 197.

tracts qualifying as "low income areas" under the New Markets Tax Credit targeting formula adopted by Congress in 2000. Unfortunately, this legislation was not considered by the Senate.

We encourage the Subcommittee to pursue legislation that clarifies that all federal credit unions are eligible to add underserved areas to their fields of membership. We believe the 2008 language provides a good place to start on achieving this end, and we would like to work with the Subcommittee as you revisit this language.

Permit Net Worth Restoration Plan Flexibility during Disasters

The National Credit Union Administration (NCUA) has little flexibility to waive credit union net worth restoration plan requirements when a credit union's operations are disrupted by natural disasters or terrorist acts.

Well-capitalized, well-managed, and properly-regulated credit unions often face circumstances beyond their control. Extreme weather events and terrorist attacks can quickly erode a credit union's net worth to asset ratio, either because of an influx of disaster relief deposits or if members temporarily become unable to make payments on the loans. When this happens, the NCUA mandate a series of draconian actions to restore net worth at the affected credit unions.

We encourage Congress to provide the NCUA Board with authority to waive temporarily the requirement to implement a net worth restoration plan for a credit union that becomes undercapitalized due to disruption of its operations by a natural disaster or a terrorist act.

Enhance Federal Credit Union Investments in Securities

The Federal Credit Union Act currently limits the investment authority of federal credit unions to loans, government securities, deposits in other federally-insured financial institutions, and certain other very limited investments. Many credit unions have large investment portfolios that can only be accommodated with these limited investment options. However, safe investing requires a diversity of investment options. Such options are severely limited for credit unions. Credit unions need additional investment authority to purchase for the credit union's own account certain securities of investment grade.

We encourage Congress to provide credit unions with additional options to safely and soundly exercise the management of excess capital, in line with the best interests of the members

of the credit unions. We would support legislation that provides additional investment authority to purchase for the credit union's own account certain investment securities of investment grade. The total amount of the investment securities of any one obligor or maker could not exceed 10% of the credit union's net worth, and the sum of such investment securities could not exceed two times net worth. This increased authority is especially important since corporate credit unions, which once served as a significant investment outlet for credit unions, are now much more focused on transactions than investment services.

The House of Representatives passed a similar proposal as Section 303 of H.R. 3505, the Financial Services Regulatory Relief Act of 2006, by a vote of 415 - 2. However, the provision was not included in the version of the legislation that was ultimately enacted into law. It was also included as Section 101 of H.R. 6312, the Credit Union, Bank, and Thrift Regulatory Relief Act of 2008, which passed the House of Representatives by voice vote on June 24, 2008; unfortunately, this legislation was not considered by the Senate.

Increase Investment Limit in Credit Union Service Organizations

The Federal Credit Union Act authorizes federal credit unions to invest in organizations providing services to credit unions and credit union members. An individual federal credit union, however, may invest in aggregate no more than one percent of its shares and undivided earnings in these organizations, commonly known as credit union service organizations or CUSOs. This is an outdated limit on credit unions' ability to invest in a CUSO. We encourage Congress to enact legislation that increases the limit on credit union investment in CUSOs to three percent.

Banking is subject to strong economies of scale. Smaller financial institutions tend to be much less efficient than larger ones, on average. For a small institution, there are only two options: grow quickly, which usually means being absorbed by a larger institution, or collaborate with other smaller institutions. Collaboration can involve several credit unions coming together to invest in an entity, in this case a CUSO, that can provide back office or other services to all of them.

A CUSO is an entity established primarily to serve the needs of its credit union owner(s) whose business relates to the daily operations of the credit union(s) it serves. CUSOs perform important services that support credit unions and enhance their ability to serve their members.

CUSOs offer data processing, computer support, marketing campaigns, teller training, loan originations, payroll support, electronic transaction services, financial counseling, checking account services, record retention and other professional services. CUSOs are jointly owned by credit unions.

In addition to facilitating more collaboration among credit unions, expanded CUSO investment authority would allow credit unions to provide additional funding for organizations that help credit unions do their work, and meet their members' financial needs. In turn, credit unions could expand their services to their members or offer services at a more favorable rate than if they had to deal with a vendor outside of the credit union system.

This provision passed the House of Representatives as Section 305 of H.R. 3505, the Financial Services Regulatory Relief Act of 2006, by a vote of 415 - 2. However, the provision was not included in the version of the legislation that was ultimately enacted into law. It was also included as Section 101 of H.R. 6312, the Credit Union, Bank, and Thrift Regulatory Relief Act of 2008, which passed the House of Representatives by voice vote on June 24, 2008; unfortunately, this legislation did not pass the Senate.

Eliminate the Numerical Limitation of Employee Groups in Voluntary Credit Union Mergers

In voluntary mergers of multiple bond credit unions, NCUA has determined that it must consider not transferring employee groups over 3,000 from the merging credit union and requiring such groups to spin off and form separate credit unions. A spun-off group with 3,000 potential members would likely have less than $20 million in assets, and would be hard-pressed to efficiently offer a broad range of financial services to its members.

As the natural consolidation of credit unions continues, we anticipate this numerical limitation will begin to pose challenges for healthy credit unions seeking to merge to serve their members more effectively. We ask Congress to eliminate the numerical limitation with respect to voluntary mergers of multiple common bond credit unions. This proposal passed the House of Representatives on March 8, 2006 as Section 308 of H.R. 3505, the Financial Services Regulatory Relief Act of 2006, by a vote of 415 - 2. However, the provision was not included in the version of this legislation that passed the Senate.

Protect Membership When Credit Unions Merge With or Convert To A Community Credit Union

Currently, when a credit union merges with a community credit union, the continuing credit union may serve members of record but groups within the merging credit union's field of membership that are outside of the continuing community credit union's boundaries must be removed and new members from those groups may not be added. This arbitrary limitation not only burdens the merger process but also limits credit union choices for affected groups that had been part of a credit union's common bond prior to a merger with a community credit union.

We urge Congress to enact legislation that would allow new members from a group that was in the field of membership of a credit union that merges with a community credit union to be eligible to join the continuing community credit union, even if the group is outside the service area of the community credit union after the merger. This proposal passed the House of Representatives on March 8, 2006, as Section 309 of H.R. 3505, the Financial Services Regulatory Relief Act of 2006, by a vote of 415 - 2. However, the provision was not included in the version of the legislation that became law. It was also included as Section 106 of H.R. 6312, the Credit Union, Bank, and Thrift Regulatory Relief Act of 2008, which passed the House of Representatives by voice vote on June 24, 2008; unfortunately, this legislation was not considered by the Senate.

A similar issue arises regarding a conversion to a community charter. Under the Federal Credit Union Act, once a common-bond credit union successfully converts to a community charter, any member falling under the previous charter's field of membership (FOM), and not residing or working within the defined community may not be included in the continuing community credit union's field of membership. This anomaly should be corrected so that in the event of a conversion to a community credit union charter, no segment of the existing common-bond credit union membership loses his/her membership rights.

Provide Federal Credit Unions with Additional Governance Flexibility

We recommend three changes to the Federal Credit Union Act related to credit union governance. First, we ask Congress to give credit unions flexibility to expel a member who is disruptive to the operations of the credit union without the need for a two-thirds vote of the membership present at a special meeting, as required by current law. Second, we ask that federal credit unions be authorized, but not required, to limit the length of service of their boards of directors to ensure broader representation from the membership. Finally, we ask that federal

credit unions be permitted to reimburse board of director volunteers for wages they otherwise forfeit by participating in credit union affairs.

Under current law, the expulsion of a member is subject to a two-thirds vote of the membership present at a special membership meeting called for that purpose. While the instances of credit union member expulsion are rare, there have been situations in the past where a more expedited expulsion process would have been warranted, including situations where a member is harassing personnel and creating safety concerns. We encourage Congress to permit federal credit unions to adopt and enforce an expulsion policy for just cause and nonparticipation by majority vote of their board of directors.

Credit unions also should have the right to limit the length of service of their boards of directors as a means to ensure broader representation from the membership. Credit unions, rather than the federal government, should determine term limits for board members. Providing credit unions with this right does not raise supervisory concerns and should not, therefore, be denied by the federal government.

Given the pressures of today's economy on many workers and the legal liability attendant to governing positions at credit unions, it is increasingly difficult to attract new members for boards of directors. Amending the Federal Credit Union Act to permit credit unions to reimburse directors for lost wages resulting from carrying out their board duties would help encourage interest and involvement in credit union boards of directors. Whether or not a volunteer attends a meeting or training session is sometimes determined by whether or not the director will have to miss work and not be paid.

These proposals passed the House of Representatives on March 8, 2006 as Section 310 of H.R. 3505, the Financial Services Regulatory Relief Act of 2006, by a vote of 415 - 2. However, the provision was left out of the final bill in negotiations with the Senate. It was also included as Section 110 of H.R. 6312, the Credit Union, Bank, and Thrift Regulatory Relief Act of 2008, which passed the House of Representatives by voice vote on June 24, 2008; unfortunately, this legislation was not considered by the Senate.

Permit NCUA Additional Flexibility to Respond to Market Conditions

The Federal Credit Union Act prohibits federal credit unions from lending at interest rates exceeding 15% annual percentage rate, except when the NCUA determines that money

market interest rates have risen over the preceding six-month period **and** that prevailing interest rate levels threaten the safety and soundness of individual credit unions as evidenced by adverse trends in liquidity, capital, earnings, and growth.

We ask Congress to give the NCUA flexibility to allow federal credit unions to lend above the 15% ceiling if either of the conditions are met: money market interests have risen over the preceding six months **or** the prevailing interest rate levels threaten the safety and soundness of individual credit unions as evidenced by adverse trends in liquidity, capital, earnings, and growth.

This proposal passed the House of Representatives on March 8, 2006 as Section 311 of H.R. 3505, the Financial Services Regulatory Relief Act of 2006, by a vote of 415 - 2. However, the provision was left out of the final bill in negotiations with the Senate. It was also included as Section 105 of H.R. 6312, the Credit Union, Bank, and Thrift Regulatory Relief Act of 2008, which passed the House of Representatives by voice vote on June 24, 2008; unfortunately, this legislation was not considered by the Senate.

Permit Privately Insured Credit Unions to Join Federal Home Loans Banks

Under current law, privately-insured credit unions are not permitted to become members of a Federal Home Loan Bank. We support the enactment of legislation that would allow privately insured credit unions to join a FHLB, providing a new source of mortgage funding for these financial institutions and their members. Passage of this legislation would advance home ownership options for members of privately-insured credit unions. A similar proposal passed the House of Representatives on March 8, 2006 as Section 301 of H.R. 3505, the Financial Services Regulatory Relief Act of 2006, by a vote of 415 - 2. However, the provision was not included in the version of this legislation adopted by the Senate. Legislation on this issue was also introduced in the 112th Congress by Representative Steve Stivers (R-OH).

Increase the Maturity Limit for Higher Education Loans Made by Federal Credit Unions

The costs of higher education continue to grow but federal credit unions are limited in their ability to meet the student loan demands of their members because of a statutory limit on the maturity of the loans they can offer. Under current law, federal credit unions are limited to making loans with maturities of 15 years or less, except for residential loans on a one-to-four

family dwelling that is the primary residence of the credit union member to whom the loan is made. We ask Congress to permit private student loans with maturities of up to 30 years for credit unions that are well positioned to manage such loans.

Require NCUA to Hold an Annual Open Hearing on its Budget

Federally-insured credit unions provide almost all of the funding for the operations of the National Credit Union Administration. From 2001 to 2008, the NCUA held annual public hearings on its budget. Since the NCUA stopped holding these hearings, the agency has significantly increased it budget and expanded its footprint. For example, the 2009 budget represented a 12% increase over the 2008 budget; in 2010, the agency approved a 13% increase; in 2011, a 12.2% increase. While the budget increases for 2012 (5.1%) and 2013 (6.1%) are lower than the increases for the crisis years, the agency continues to increase the budget at a time when the FDIC is reducing its budget. For 2013, the FDIC has approved a 17% budget decrease.

We encourage Congress to encourage the NCUA to justify why the agency continues to expand its footprint at a time when other similar regulators are reducing their footprint, and when almost the entire federal government is being subjected to cuts as a result of sequestration. We also encourage Congress to enact legislation requiring the NCUA to make publicly available a budget on an annual basis and hold a hearing to receive input from the public. The credit unions paying for the operation of the NCUA deserve a voice in the development of the agency's budget, and they deserve a transparent budget process that funds an appropriately sized and efficient regulatory agency.

Improvements to the Dodd-Frank Act

Improve Coordination between the CFPB and the NCUA

Credit unions are rightly concerned that they are being subjected to new regulations and requirements by the CFPB that address abuses that have not involved credit unions. The regulatory burden on credit unions is tremendous and the cumulative impact of all regulatory requirements is diverting credit unions from fulfilling their primary mission, which is to serve their members. As member owned financial cooperatives, credit unions are in business to protect and promote their members' financial interests. However, credit unions are increasingly

subjected to the very same rules that are intended to address the most egregious practices in the financial market place.

We ask Congress to require the CFPB to coordinate with the National Credit Union Administration and state credit union regulators to determine whether it is necessary to impose new regulatory or data collection requirements on credit unions or whether such requirements should be modified in recognition of credit unions' current efforts to protect consumers. Exemptions and modifications would have to be applied in accordance with procedures established by the CFPB.

Codify the Credit Union Advisory Council

Shortly after the CFPB was established, the Bureau leadership announced the creation of a credit union advisory council (CUAC). This group, the creation of which CUNA strongly urged, advises the agency on the impact of the Bureau's proposals on credit unions, sharing information, analyses, recommendations and the unique perspective of not-for-profit financial institution with the agency director and staff. However, since the CUAC is not required by law, it could be abolished at any time. We believe the CUAC is an important resource for the agency and also provides a forum for credit union officials to provide direct feedback to the agency on how proposals and final rules will affect credit unions' operations.

We ask Congress to codify the CFPB Credit Union Advisory Council as a legal requirement and to require the CFPB to reimburse CUAC members for their travel and lodging expenses incurred to attend meetings of the CUAC.

Require SBREFA Panels for all CFPB Rules

As required by the Dodd-Frank Act, the Consumer Financial Protection Bureau has held Small Business Regulatory Enforcement Fairness Act (SBREFA) panels for several of its regulations, including mortgage rules. These panels, which are conducted under the auspices of the Small Business Administration's Office of Advocacy, are invaluable for identifying concerns and shedding light on costs small businesses will have to bear under new proposals. However, the CFPB has taken the view that it is not required to hold a SBREFA panel for rulemaking that involve regulations transferred from other agencies, such as the international remittance transfers regulation that was initiated by the Federal Reserve Board.

We ask Congress to direct the CFPB to hold Small Business Regulatory Enforcement Fairness Act (SBREFA) panels for all regulations that the CFPB promulgates which could impact small businesses, including for regulations that were initiated by other federal regulators such as the Federal Reserve Board.

Other Regulatory Improvements

Improve Regulation D With Respect to Automatic Transfers from Savings to Checking Accounts

Federal Reserve Regulation D governs depository institution reserve requirements used by the Federal Reserve to influence monetary policy. Regulation D impacts credit union members by limiting the number of withdrawals permitted from Share Savings, Money Market, and other savings accounts in a manner no longer consistent with economic realities. Regulation D has not been updated since passage of the Depository Institutions Deregulation and Monetary Control Act of 1980, an act adopted because national banks were converting to state-charters in order to avoid regulation by the Fed. These conversions impeded the Fed's ability to influence monetary policy and fight stagflation.

While permitting the Federal Reserve to influence monetary policy remains important to maintaining a healthy economy, these 33-year-old rules should be updated for the 21st century, particularly with regard to Regulation D's restrictions on savings accounts. Raising or eliminating the cap on the number of transfers between these accounts per month could reduce the number of overdraft fee or non-sufficient balance fees incurred by consumers. We encourage Congress to consider such legislation.

Reduce the Loan Loss Reserve Requirement of SBA's Microloan Program

The Small Business Administration's Microloan Program is designed to provide small businesses with short-term loans for working capital or to purchase inventory or supplies. Under this program, the SBA makes special funds available to nonprofit organizations with experience in lending and technical assistance called intermediaries. These intermediaries then make loans to eligible borrowers in amounts up to a maximum of $50,000.

In order to be an intermediary, the financial institution is required to have a loan loss reserve fund that is 15 percent of the outstanding balance of the notes receivable owed to the

intermediary. While there are circumstances where the Administrator may reduce the annual loan loss reserve requirement, in no case will it be allowed to drop below 10 percent of the outstanding balance of the notes receivable owed. In the situations where the Administrator may reduce the loan loss reserve for an intermediary, the average annual loss rate for the intermediary must be less than 15 percent during the 5 years preceding said period.

We encourage Congress to enact legislation that reduces the loan loss reserve requirement for SBA microloans to no more than 5 percent of the outstanding balance of the notes receivable owed to the intermediary, and authorize the Administrator to reduce the annual loan loss reserve requirement to no less than 1 percent if the average annual loss rate for the intermediary is less than 5 percent.

Require an FSOC Assessment of the Unintended Consequences of Accounting Standards on Private Entities

There are numerous existing accounting standards as well as several proposed standards that are intended to address problems related to publicly traded companies; most of these accounting standards apply equally to non-publicly traded companies. We encourage Congress to direct the FSOC to conduct post-implementation assessments of new and revised accounting standards issued by FASB to identify the unintended consequences of applying accounting standards designed for publicly-traded entities to private entities. This proposal is intended to alert the accounting standard setters and financial regulators to unintended consequences of misapplication of accounting standards to private entities, and in turn prompt positive changes to such standards.

Enact Examination Fairness Legislation

Concerns regarding credit union examinations increase during difficult economic times, but even as the economy recovers, credit unions continue to express concern with their examinations. In a recent survey conducted by CUNA, 25% of credit unions reported dissatisfaction with their most recent exam. Credit unions support strong but fair and appropriate safety and soundness regulation and supervision to protect the financial resources of credit unions and their members and to minimize costs to the NCUSIF borne by all federally insured credit unions. These exams should be based on the laws Congress enacts and the regulations that

NCUA promulgates, and the appeals process should protect credit unions from examiner retaliation.

We were very grateful for and pleased to support the legislation introduced in the 112th Congress by Chairman Capito (R-WV) and Representative Carolyn Maloney (D-NY) that would codify certain examination standards, provide an independent ombudsman to whom credit unions and banks could raise concerns about their exams, and create an independent appeals process under which they could dispute determinations made in their exams. We also appreciated the hearing that was held in 2012 on this legislation; in the months following that hearing, we began to hear from credit unions anecdotally of improved examination experiences. We believe one of the reasons for this was the impact of the hearing. We encourage the Subcommittee to continue to shed light on the examination experiences of credit unions and small banks, and we look forward to working with you on the examination fairness legislation in the 113th Congress.

Studies

Direct the Treasury Department to Study the Credit Union Examination Appeals Process

Credit unions need an effective and efficient process for appealing examination findings and directives that they reasonably determine are arbitrary. Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994 requires that certain agencies, including the NCUA, develop an independent appeals process for examination issues. While the NCUA has taken steps to implement the requirement, credit unions remain concerned that absent passage of the examination fairness legislation, credit unions have limited resource to challenge unwarranted directives and findings.

We encourage Congress to direct the Secretary of Treasury to conduct a study regarding the usefulness and transparency of the appeals process to credit unions seeking redress for examination directives of NCUA, and to report to Congress the results of this study along with recommendations to ensure that credit unions have a fair and independent appeals process.

Direct the GAO to Study NCUA's Use of Authority to Deviate from Generally Accepted Accounting Principles (GAAP)

There are numerous existing generally accepted accounting standards as well as several proposed standards that apply inappropriately to credit unions as member-owned cooperatives, which are not publicly traded. Under the Federal Credit Union Act, NCUA is authorized to allow credit unions to deviate from generally accepted accounting principles. "If the [NCUA] Board determines that the application of any generally accepted accounting principle to any insured credit union is not appropriate, the Board may prescribe an accounting principle for application to the credit union that is no less stringent than generally accepted accounting principles."[4] However, the agency rarely invokes the authority. We believe a government study is needed regarding the extent to which NCUA has such authority and to assess the consequences to credit unions and the agency should deviations be permitted, particularly in the area of merger accounting and credit impairments and losses.

We encourage Congress to direct the Government Accountability Office to conduct a study of: (1) whether the NCUA has sufficient statutory discretion to deviate from existing U.S. GAAP designed for publicly traded companies; and (2) the costs and benefits to credit unions and the NCUA should NCUA allow financial statement reporting for merger accounting and credit impairment and losses that deviates from GAAP standards.

Order Additional Studies on Cost-Benefit Analysis of Rulemakings that Affect Credit Unions

Credit unions are concerned that federal regulators are not sufficiently assessing costs and benefits when promulgating new regulations. Since 2008, credit unions have been subjected to in excess of 120 regulatory changes from at least 15 different federal agencies. The burden of complying with ever-changing and ever-increasing regulatory requirements is particularly onerous for smaller institutions, including credit unions.

The OMB and GAO should conduct additional studies on the cost-benefit analysis of rulemakings from the federal financial agencies, including the NCUA and CFPB, and assess the impact and costs on credit unions and smaller financial institutions.

Direct the GAO to Study the Cumulative Regulatory Burden Facing Credit Unions and Small Banks

[4] 12 U.S.C. § 1782(a)(6)(C)(ii)

We encourage Congress to direct the GAO to complete a study on the total cumulative regulatory burden facing credit unions and small banks, and the effect this burden has on the ability of these institutions to meet the financial services needs of their communities. As part of this study, we would encourage Congress to ask the GAO to include recommendations for minimizing the current and future regulatory burdens on these institutions and include analyses and responses from the federal regulators of depository institutions as well as the CFPB.

Direct the GAO to Study the Impact of Supervisory Actions on the Vitality of Community Based Financial Institutions

We encourage Congress to direct the GAO to review and report to Congress on an annual basis the actions taken by the NCUA and FDIC related to the supervision of the institutions under their authority and the impact of those actions on the vitality of such institutions.

Direct the NCUA to Report on its Activities that Promote Dual Chartering of Credit Unions

We encourage Congress to enact legislation directing the NCUA to report to Congress on an annual basis its actions in the previous year that promoted dual chartering for credit unions and any action it took that resulted in limiting the ability of states to set standards for the credit unions under their supervision.

Conclusion

The scope and depth of the regulatory burden crisis facing community financial institutions is so great that producing an exhaustive list of the challenges and the solutions is frankly impossible. There are a number of other areas of concern to credit unions in this space that may warrant separate consideration, including the implementation and the adverse impact of the debit interchange regulation and the potential consequences of housing finance reform legislation.

With respect to the debit interchange amendment, the impact of the law and its regulation is very real to credit unions of all sizes. A recent Federal Reserve report included data showing

the detrimental impact of the debit regulation on small financial institutions.[5] While small issuers (less than $10 billion in assets) are exempt from the regulated debit rate, they are not exempt from the law's provisions on routing and exclusivity. As the full impact of the entire regulation becomes more apparent over time, we urge Congress to continue to pay close attention to the impact on credit unions and other small issuers.

Finally, as Congress proceeds to consider housing finance reform legislation, we hope the concerns of community based financial institutions will be addressed. It is critical that a functioning, well regulated secondary mortgage market ensures fairness, provides liquidity in all market conditions and allows for equal access to the secondary market so that credit unions will be readily available to serve their members on the terms that they expect and demand. We look forward to working with the Committee on this issue.

Once again, we greatly appreciate the opportunity to testify at today's hearing. We hope that what we have submitted provides a good starting place for the Subcommittee, and we look forward to working with you and others to achieve meaningful regulatory relief.

[5] Federal Reserve Board of Governors. 2011 Interchange Fee Revenue, Covered Issuer Costs, and Covered Issuer and Merchant Fraud Losses Related to Debit Card Transactions. March 5, 2013. http://www.federalreserve.gov/paymentsystems/files/debitfees_costs_2011.pdf

ATTACHMENT I

MEMORANDUM RELATED TO CFPB EXEMPTION AUTHORITY

This memorandum addresses the Bureau's statutory authority to exempt credit unions from obligations imposed by: (1) Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act[1] ("Dodd-Frank Act") and Bureau regulations issued under Title X; and (2) the "enumerated consumer laws" and Bureau regulations to implement those laws.

Executive Summary

As described in greater detail below, the Bureau has several sources of statutory authority that it could use to provide exemptions from the requirements of statutes or implementing regulations generally or the requirements of certain provisions specifically.[2] These statutory provisions individually and together grant broad authority to the Bureau and constitute a strong legal framework to support the agency's reasonable use of its exemption authority.

For example, Section 1022 of Title X of the Dodd-Frank Act permits the Bureau to exempt ***any*** **class of covered person from** ***any*** **provision of Title X or** ***any*** **rule issued by the Bureau under Title X** if such an exemption is consistent with relevant statutory considerations that the Bureau must take into account in issuing an exemption.

In addition to this general authority, of the eighteen enumerated consumer laws, eleven provide the Bureau with specific exemption authority. Specifically, of the eighteen enumerated consumer laws:

- Five permit the Bureau generally to provide exemptions for specific classes of transactions only;
- Five permit the Bureau to make exemptions from specific statutory provisions only; and
- One permits the Bureau to provide exemptions for specific classes of transactions and also permits the Bureau to make exemptions from specific statutory provisions.

As discussed below, however, the various statutes generally do not define the phrase "class of transaction" or otherwise clarify whether a "class of transaction" may apply to a specific type of institution. Nonetheless, the Bureau's exemption authority under specific provisions of certain laws may be broader than its more general "class of transaction" authority.

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[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] We note that, in large part, the Bureau's exemption authority is permissive and not mandatory. That is, where permitted, the Bureau may (but is not required to) provide exemptions.

Five of the eighteen enumerated consumer laws permit the Bureau to make exemptions for classes of transactions subject to substantially similar state laws.[3] This "substantially similar state law" exemption authority requires, among other things, that there be a state law that is substantially similar to the federal law and that there is adequate provision for enforcement of that state law.

Regardless of the source of exemption authority, our discussion below assumes that any Bureau use of its exemption authority would be consistent with the Administrative Procedure Act. Specifically, we assume that any Bureau use of its exemption authority by rule would not be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."[4] For example, if the Bureau were to make an exemption for credit unions and not for other types of institutions as well, the Bureau would need a sufficient basis for treating credit unions differently than other types of institutions.

Background on the Bureau

As you know, Title X of the Dodd-Frank Act created the Bureau as an independent agency within the Federal Reserve System. In general, the Bureau is charged with writing rules to implement a number of federal consumer financial laws, as well as supervision and enforcement of those laws. Certain consumer financial protection functions previously performed by the federal banking agencies and the National Credit Union Administration ("NCUA") were transferred from such agencies to the Bureau. In addition to inheriting supervisory and enforcement authority for certain institutions, the Bureau is generally authorized to issue regulations to implement various consumer financial protection laws. Separately, the Bureau is authorized to engage in rulemakings and to take certain actions regarding unfair, deceptive or abusive acts or practices in connection with consumer financial products and services.[5]

Broad Bureau Exemption Authority Under Section 1022 of Title X

Section 1022 of Title X of the Dodd-Frank Act authorizes the Bureau "to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law."[6] Section 1022 permits the Bureau to "prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof."[7] The "Federal consumer financial laws" include Title X, the "enumerated consumer laws" and any Bureau rule prescribed under Title X or the

[3] Note that only one law, the Fair Debt Collection Practices Act, includes only the "substantially similar state law" exemption authority. That is, four of the five laws that include this type of exemption authority also include another type of exemption authority, such as the "class of transaction" authority discussed above.
[4] 5 U.S.C. § 706(2)(A).
[5] *See* 15 U.S.C. § 5531.
[6] 12 U.S.C. § 5512(a).
[7] 12 U.S.C. § 5512(b)(1).

enumerated consumer laws. As a result, in addition to any other rulewriting authority provided for under Title X or the enumerated consumer laws, Section 1022 separately authorizes the Bureau to write rules as it deems appropriate to carry out the purposes and objectives of the Federal consumer financial laws.

Section 1022 also provides the Bureau with exemption authority with respect to Title X and the rules that the Bureau may prescribe to carry out the purposes and objectives of the Federal consumer financial laws (*i.e.*, Bureau rules issued under Title X). Specifically, Section 1022 provides that the Bureau "**may conditionally or unconditionally exempt any class of covered persons . . . from any provision of [Title X], or from any rule issued under [Title X]**, as the Bureau determines necessary or appropriate to carry out the purposes and objectives of" the Title.[8]

This exemption authority is far-reaching. Section 1022 authorizes the Bureau to provide an exemption from a Bureau rule issued under Title X that addresses conduct governed by an enumerated consumer law, even if that specific law does not provide the Bureau with independent exemption authority. That is, the Bureau's authority to provide an exemption from a rule issued under Title X is not contingent on statutory exemption set forth under the underlying enumerated consumer laws.

In order to exempt credit unions from a rule issued under Title X, the Bureau must determine that such an exemption is appropriate to carry out the purposes and objectives of Title X. The broadly stated "purpose" of Title X, as described in Section 1029A, is for the Bureau to implement and enforce the Federal consumer financial laws "consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive."[9] For example, if credit unions could no longer offer certain consumer financial products or services because of an inability to do so on a competitive cost basis, including because compliance costs outweigh revenue, the Bureau may find an exemption appropriate in order to ensure or expand consumer access to those products.

Moreover, the stated "objectives" of Title X, as described in Section 1029A, are that the Bureau's authority under the Federal consumer financial laws is "for the purposes of ensuring" that: (1) consumers are provided with timely and understandable information to make responsible decisions about financial transactions; (2) consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination; (3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens; (4) federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and (5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.[10] For example, the Bureau may find it appropriate to rely on the "burden" objective (3) or the "markets" objective (5) to take the

[8] 12 U.S.C. § 5512(b)(3)(A) (emphasis added).
[9] 12 U.S.C. § 5511(a).
[10] 12 U.S.C. § 5511(b).

position that an exemption is appropriate where credit unions were not able to provide their members with access to certain financial products or services because of compliance burdens or cost challenges.

Finally, Section 1022 also includes three statutory considerations that the Bureau must take into account in issuing an exemption to a rule issued under Title X. Specifically, in issuing such an exemption, the Bureau must, as appropriate, consider three factors: (1) the total assets of the class of covered persons; (2) the volume of transactions involving consumer financial products or services in which the class of covered persons engages; and (3) existing provisions of law that are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections.[11] The statute is silent on how the Bureau should consider these factors. Nonetheless, based on the context, the Bureau might determine that an exemption is appropriate where, for example, a covered person has fewer total assets or engages in a volume of transactions that is less than the average covered person.

Bureau Exemption Authority Under the Enumerated Consumer Laws

As indicated above, the Dodd-Frank Act transferred certain existing rulewriting authority under the "enumerated consumer laws" from other agencies to the Bureau. Of the enumerated consumer laws, the following twelve provide the Bureau with some type of express exemption authority:

(1) the Consumer Leasing Act of 1976 ("CLA");
(2) the Electronic Fund Transfer Act ("EFTA"), except for Section 920 (debit interchange);
(3) the Equal Credit Opportunity Act ("ECOA");
(4) the Fair Credit Billing Act ("FCBA");
(5) the Fair Credit Reporting Act ("FCRA"), except for Section 615(e) (red flags) and Section 628 (disposal of credit report information);
(6) the Fair Debt Collection Practices Act ("FDCPA");
(7) Subsections (b) through (f) of Section 43 of the Federal Deposit Insurance Act ("FDIA");
(8) Sections 502 through 509 of the Gramm-Leach-Bliley Act ("GLBA"), except for Section 505 (enforcement) as it applies to Section 501(b) (information security);
(9) the Home Mortgage Disclosure Act of 1975 ("HMDA");
(10) the Home Ownership and Equity Protection Act of 1994 ("HOEPA");
(11) the Real Estate Settlement Procedures Act of 1974 ("RESPA"); and
(12) the Truth in Lending Act ("TILA").[12]

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[11] 12 U.S.C. § 5512(b)(3)(B).

[12] *See* 12 U.S.C. § 5481(12). Six of the enumerated consumer laws either do not provide the Bureau with specific rule writing authority or do not provide the Bureau with express authority to make exceptions for credit unions. These six laws are: (1) the Truth in Savings Act; (2) the Alternative Mortgage Transaction Parity Act of 1982; (3) the Home Owners Protection Act of 1998; (4) the Interstate Land Sales Full Disclosure Act; (5) the S.A.F.E. Mortgage Licensing Act of 2008; and (6) Section 626 of the Omnibus Appropriations Act, 2009. If, however, the Bureau were to issue a rule under Title X relating to conduct also covered by these six laws, Section 1022 would appear to

Each of these twelve enumerated consumer laws provides the Bureau with specific exemption authority, but such authority is not uniform. For ease of use, we have separated the discussion of the Bureau's exemption authority into the following three sections based on the type of exemption authority:

- General authority to exempt specific classes of transactions;
- Authority to make exemptions from specific provisions of a statute; and
- Authority to exempt persons subject to substantially similar requirements under state law.

Class of Transaction Exemption Authority

A number of the enumerated consumer laws authorize the Bureau to make exceptions for classes of transactions that would otherwise be covered by these laws. Specifically, TILA, EFTA, ECOA, HMDA, RESPA and CLA each provide the Bureau with general authority to exempt classes of transactions. As discussed below, these statutes do not define the scope of this "class of transaction" exemption authority.

- Section 104 of TILA provides that the statute does not apply to any transaction for which the Bureau determines by rule that coverage under the statute is not necessary to carry out its purposes.[13]

- Section 105 of TILA provides that any Bureau regulation to carry out the purposes of TILA (except for the mortgage limitations of Section 129 (HOEPA)) "may provide for such . . . exceptions for all or any class of transactions, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of [TILA], to prevent circumvention or evasion thereof, or to facilitate compliance therewith."[14]

- Section 105 of TILA also authorizes the Bureau to exempt by regulation from all or part of TILA "all or any class of transactions, other than transactions involving any mortgage described in section 103(aa), for which, in the determination of the Bureau, coverage under all or part of [TILA] does not provide a meaningful benefit to consumers in the form of useful information or protection."[15]

- Section 129H of TILA provides that the Bureau, the federal banking agencies, the NCUA and the Federal Housing Finance Agency may jointly exempt by rule "a class of loans" from the requirements of Sections 129H(a) and 129H(b) (relating to limitations on higher-risk mortgages without a written appraisal and the related appraisal requirements)

provide the Bureau with exemption authority for that rule, assuming that the rule was issued pursuant to Title X and not one of the six laws.

[13] 15 U.S.C. § 1603(5).

[14] 15 U.S.C. § 1604(a).

[15] 15 U.S.C. § 1604(f)(1). In determining whether to exempt a class of transactions, the Bureau must consider five factors, including, for example, whether the goal of consumer protection would be undermined by the exemption. 15 U.S.C. § 1604(f)(2).

if the agencies determine that the exemption is in the public interest and promotes the safety and soundness of creditors.[16]

- Section 904 of the EFTA provides that any Bureau regulation to carry out the purposes of the EFTA "may provide for such . . . exceptions" for any class of electronic fund transfers or remittance transfers, as the Bureau believes are necessary or proper to effectuate the purposes of the EFTA, to prevent circumvention or evasion thereof or to facilitate compliance with the EFTA.[17]

- Section 703 of the ECOA provides that any Bureau regulation to carry out the purposes of the ECOA "may provide for such . . . exceptions" for any class of transaction, as the Bureau believes are necessary or proper to effectuate the purposes of the ECOA, to prevent circumvention or evasion thereof or to facilitate compliance with the ECOA.[18]

- Section 703 of the ECOA also provides that the Bureau's regulations may exempt from the ECOA "any class of transactions that are not primarily for personal, family, or household purposes, or business or commercial loans made available by a financial institution, except that a particular type within a class of such transactions may be exempted if the Bureau determines, after making an express finding that the application of [the ECOA or any ECOA provision] of such transaction would not contribute substantially to effecting the purposes of" the ECOA.[19]

- HMDA provides that the Bureau's regulations to carry out the purposes of HMDA "may provide for such . . . exceptions" for any class of transaction that the Bureau believes are necessary or proper to effectuate the purposes of HMDA, to prevent circumvention or evasion thereof or to facilitate compliance with HMDA.[20]

- RESPA provides the Bureau with authority "to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of" the statute.[21]

- The CLA provides the Bureau with authority to "provide for . . . exceptions for any class of transactions, as the Bureau considers appropriate."[22]

To use these specific exemption authorities, the Bureau must classify or distinguish transactions that otherwise would be subject to the underlying statute. That is, the Bureau must determine what a "class of transactions" entails. Although the phrase "class of transaction" is not defined in the relevant statutory provisions, the plain language references transactions and

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[16] 15 U.S.C. § 1639h(b)(4)(B).
[17] 15 U.S.C. § 1693b(c).
[18] 15 U.S.C. § 1693b(a)(1).
[19] 15 U.S.C. § 1693b(b). Note that such an exemption may only be for a period of five (5) years and only may be extended if the Bureau determines that such exemption remains appropriate. 15 U.S.C. § 1693b(c).
[20] 12 U.S.C. § 2804(a).
[21] 12 U.S.C. § 2617(a).
[22] 15 U.S.C. § 1667f(a)(2).

not persons or specific types of persons, such as creditors. Nonetheless, the Bureau could take the position that one way to classify or distinguish transactions is to look to the type of institution that is engaging in the transaction, such as a credit union that is not for profit (as opposed to for-profit entities). For example, the Bureau could take the position that a credit card issued by a not-for-profit credit union (or similar entity) is a "class of transaction" for purposes of TILA.

Each of the provisions cited above (other than the CLA) provide that the exemption authority must be used as necessary or appropriate to fulfill the purposes of the underlying statute. Similar to the discussion above with respect to Section 1022, the need to determine that an exemption is appropriate to fulfill the purposes of the underlying statute would apply in the context of providing an exemption for credit unions; that is, where applicable, the Bureau would have to determine that an exemption for credit unions meets the underlying purpose of the statute. Depending on the specific exemption being considered, the Bureau may determine that an exemption for credit unions is consistent with a statute's purpose, such as if the Bureau were to find that such an exemption would ensure or expand consumer access to a particular financial product or service. For example, the Bureau is currently considering a remittance regulation under Regulation E. In this context, the Bureau may determine that an exemption for credit unions is consistent with the EFTA's purpose.

Although not exemption authority *per se*, we note that Section 904 of the EFTA directs the Bureau by regulation to modify the requirements of the EFTA "on small financial institutions if the Bureau determines that such modifications are necessary to alleviate any undue compliance burden on small financial institutions and such modifications are consistent with the purpose and objective of" the EFTA.[23] In addition to the Bureau's authority under the EFTA to provide for exceptions, including potentially for small financial institutions, the Bureau also would have the authority to modify (and presumably reduce the compliance burden associated with) specific requirements of the EFTA for small financial institutions.

Exemption Authority for Specific Statutory Provisions

A number of the enumerated consumer laws, specifically, TILA, FCBA, FCRA, GLBA, Section 43(d) of FDIA and HOEPA, include provisions that permit the Bureau to make exceptions from specific requirements of those laws (as opposed to exemptions from the laws generally). In some cases, such as, for example, TILA, this specific exemption authority is in addition to other exemption authority.

- Section 129D of TILA provides that the Bureau may exempt from the requirements of Section 129D(a) (relating to escrow or impound accounts) a creditor that: (1) operates predominantly in rural or underserved areas; (2) together with all affiliates, has total annual mortgage loan originations that do not exceed a limit set by the Bureau; (3) retains its mortgage loan originations in portfolio; and (4) meets any asset size threshold and any other criteria the Bureau may establish, consistent with the statutory purpose.[24]

[23] 15 U.S.C. § 1693b(c).

[24] 15 U.S.C. § 1639d(c). Note that the Federal Reserve Board issued a proposal in March 2011 to make such an exemption. *See* 76 Fed. Reg. 11,598 (Mar. 2, 2011).

- The FCBA provides that the Bureau may by rule provide "reasonable exceptions" to the statute's limitation on increases in the annual percentage rate for promotional rates for credit card accounts within the first six month such rate is effective.[25]

- Section 615(h) of the FCRA specifies that the Bureau's rules to implement the risk-based pricing requirements must address "exceptions to the [risk-based pricing] notice requirement . . . for classes of persons or transactions regarding which the agencies determine that notice would not significantly benefit consumers."[26]

- Section 504 of the GLBA provides that the Bureau's regulations to implement the GLBA privacy provisions may include exceptions to Section 502's opt-out requirements and limitations on reuse of information and sharing of account numbers for marketing purposes.[27]

- Section 43(d) of the FDIA provides that the Bureau may make exceptions to the Section 43(b) disclosure requirements applicable to depository institutions that do not have federal deposit insurance (*i.e.*, consumer oriented disclosures regarding the fact that an institution lacks federal deposit insurance) for any such institution that "does not receive initial deposits of less than an amount equal to the standard maximum deposit insurance amount from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money."[28]

- Section 129 of HOEPA provides that the Bureau may by rule exempt specific mortgage products or categories of mortgages from certain of Section 129's prohibitions, such as for prepayment penalties, balloon payments and negatively amortizing loans.[29]

To the extent that this exemption authority is not based on a specific type of transaction or product (like the HOEPA exemption authority), the Bureau would not have to address the scope of a "class of transaction" in order to use such authority, as discussed above. That is, the Bureau would not need to define a type of institution, such as a credit union, as a "class of transaction" in order to use this exemption authority. For example, to the extent a provision simply indicates that the Bureau has the authority to make exemptions without imposing conditions on such authority (*e.g.*, section 504 of the GLBA), the Bureau should have greater authority than under a provision that limits its exemption authority to certain types of transactions or products or under a provision that requires that the Bureau find that an exemption is appropriate to carry out the purposes or objectives a statute. As a result, the Bureau may have

[25] 15 U.S.C. § 1666i-2(b).
[26] 15 U.S.C. § 1681m(h)(6)(B)(iii).
[27] 15 U.S.C. § 6804(b).
[28] 12 U.S.C. § 1831t(d).
[29] 15 U.S.C. § 1639(p)(1). Note that the Bureau must find that an exemption is in the interest of the borrowing public and will apply only to products that maintain and strengthen home ownership and equity protection. 15 U.S.C. §§ 1639(p)(1)(A) - (B).

even greater flexibility to make exemptions for credit unions under these provisions than the "class of transactions" authority discussed above.

Substantially Similar State Law Exemption Authority

A number of the enumerated consumer laws authorize the Bureau to exempt from coverage under those laws classes of transactions that are subject to state laws that impose substantially similar state requirements or provide for greater consumer protection and that make adequate provision for enforcement. Specifically, TILA, FCBA, HMDA, CLA and FDCPA include this type of exemption authority.

- Section 123 of TILA directs the Bureau by regulation to exempt from the requirements of Chapter 2 of TILA (relating to consumer credit cost disclosures) "any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under [Chapter 2], and that there is adequate provision for enforcement."[30]

- The FCBA directs the Bureau to exempt from the requirement of the statute "any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under [the Act] or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement."[31]

- HMDA provides that the Bureau may by rule exempt from HMDA's requirements "any State-chartered depository institution within any State or subdivision thereof, if the [Bureau] determines that, under the law of such State or subdivision, that institution is subject to requirements that are substantially similar to those imposed under [HMDA], and that such law contains adequate provisions for enforcement."[32]

- The CLA directs the Bureau to write rules exempting from the requirements of the statute "any class of lease transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under [the Act] or that such law gives greater protection and benefit to the consumer, and that there is adequate provision for enforcement."[33]

- The Fair Debt Collection Practices Act ("FDCPA") directs the Bureau to exempt from the FDCPA's requirements "any class of debt collection practices within any State if the Bureau determines that under the law of that State that class of debt collection practices is

[30] 15 U.S.C. § 1633. Note that the Bureau has proscribed procedures for a state to apply for such an exemption. 12 C.F.R. pt. 1026, App. B.
[31] 15 U.S.C. § 1666j(b).
[32] 12 U.S.C. § 2805(b).
[33] 15 U.S.C. § 1667e(b).

subject to requirements substantially similar to those imposed by [the FCPA], and that there is adequate provision for enforcement."[34]

This type of exemption authority is more limited than the others discussed above. First, the Bureau must find that a class of transactions subject to the specific federal statute is also subject to a similar state law. This factor itself could limit the availability of the exemption to state-chartered credit unions in some instances. The Bureau also must find that the state law's requirements are "substantially similar" to those imposed by the federal statute. In addition, the Bureau must find that there is adequate provision for enforcement of the state laws. Also, this type of exemption authority is frequently limited to exempting classes of transactions. Since credit unions only would be exempt if they were also subject to substantially similar state laws, it is not clear whether this exemption authority would be as meaningful as the other exemption authorities discussed herein.

* * * *

As discussed above, Section 1022 of Title X of the Dodd-Frank Act and a number of the enumerated consumer laws provide the Bureau with express authority to provide exemptions from the requirements of statutes or implementing regulations generally or the requirements of certain provisions specifically. These various statutory provisions individually and together grant broad authority to the Bureau and constitute a strong legal framework to support the agency's reasonable use of its exemption authority.

[34] 15 U.S.C. § 1692o.

ATTACHMENT II

FINALIZED FEDERAL REGULATORY CHANGES APPLICABLE TO CREDIT UNIONS WITH EFFECTIVE DATES ON OR AFTER JANUARY 1, 2008

	Effective Date	Title of Final Rule	Agency
1.	1/1/2008	FEMA Flood Map Changes	FEMA
2.	1/1/2008	Annual Electronic Filing Requirement For Small Tax Exempt Organizations – Form 990-N	IRS
3.	1/1/2008	IRS Form 990 Instructions - New Reporting Form	IRS
4.	1/1/2008	IRS Redesign Form 990	IRS
5.	2/25/2008	Final Rules On Transaction Origin Identification	NACHA
6.	5/29/2008	Disclosures for Subprime Mortgage Loans	NCUA
7.	7/7/2008	CAN-SPAM Act Rules	FTC
8.	10/1/2008	Hope for Homeowners Program for Subordinate Lienholders	FHA
9.	10/10/2008	Use of Fair Value in an Inactive Market	FASB
10.	10/22/2008	Share Insurance Signs to Reflect Increased Limits	NCUA
11.	10/31/2008	Official Advertising Statement	NCUA
12.	11/21/2008	Incidental Powers	NCUA
13.	11/21/2008	Share Insurance Signs for Shared Branching	NCUA
14.	12/15/2008	Amendments to the Impairment Guidance No. 99-20	FASB
15.	12/31/2008	PCA: Amended Definition of Post-Merger Net Worth	NCUA
16.	1/2/2009	Criteria to Approve Service to Underserved Areas	NCUA
17.	1/7/2009	Interim Final Rule on Hope for Homeowners Program	FHA
18.	1/16/2009	Final RESPA Rule	HUD
19.	1/19/2009	Unlawful Internet Gambling	FED
20.	4/1/2009	Share Insurance Signs for Shared Branching	NCUA
21.	4/27/2009	RegFlex Changes for Unimproved Land	NCUA
22.	5/14/2009	Technical Changes to the FACT Act "Red Flags"	NCUA
23.	6/15/2009	Fair Value: Decrease in Market Activity/Transactions That Are Not Orderly	FASB
24.	6/15/2009	Recognition and Presentation of Other-Than-Temporary Impairments	FASB
25.	6/20/2009	Restructuring of Federal Reserve's Check Processing Operation: Districts 10, 11, and 12	FED
26.	7/2/2009	Fed Rule Authorizing Excess Balance Accounts and Earnings on Balances	FED
27.	7/2/2009	Fed Rule Authorizing Pass-through Accounts and Adjusting the Limitation on Savings Account Transfers	FED
28.	7/19/2009	Restructuring of Federal Reserve's Check Processing Operation: Districts 6 and 8	FED
29.	7/25/2009	Restructuring of Federal Reserve's Check Processing Operation: Districts 4 and 9	FED
30.	7/30/2009	Revisions to Regulation Z Mortgage Loan Disclosures	FED

	Effective Date	Title of Final Rule	Agency
31.	9/1/2009	Credit Union Reporting	NCUA
32.	9/12/2009	Restructuring of Federal Reserve's Check Processing Operation: Districts 4 and 7	FED
33.	9/14/2009	Regulation Z Disclosures for Private Student Loans	FED
34.	9/21/2009	Regulation Z Rule Implementing the CARD Act	FED
35.	10/1/2009	Amendments to the Home Mortgage Provisions of Regulation Z	FED
36.	10/17/2009	Restructuring of Federal Reserve's Check Processing Operation: Districts 11 and 12	FED
37.	10/18/2009	Restructuring of Federal Reserve's Check Processing Operation: District 4	FED
38.	10/18/2009	Restructuring of Federal Reserve's Check Processing Operation: District 6	FED
39.	11/6/2009	Election of Federal Home Loan Bank Directors	FHFA
40.	11/14/2009	Restructuring of Federal Reserve's Check Processing Operation: Districts 11 and 12	FED
41.	11/30/2009	Share Insurance Coverage for Revocable Trust Accounts	NCUA
42.	11/30/2009	Temporary Increase in SMSIA; Display of Official Sign; Coverage for Mortgage Servicing Accounts	NCUA
43.	12/12/2009	Restructuring of Federal Reserve's Check Processing Operation: District 3	FED
44.	12/24/2009	Exceptions to the Maturity Limit on Second Mortgages	NCUA
45.	1/1/2010	Overdraft Protection Disclosures	FED
46.	1/1/2010	Revisions to Regulation S	FED
47.	1/1/2010	Operating Fees	NCUA
48.	1/1/2010	Truth in Savings Rule for Overdraft Protection and Electronic Disclosures	NCUA
49.	1/4/2010	NCUSIF Premium and One Percent Deposit	NCUA
50.	2/4/2010	Federal Home Loan Bank Membership to Include Non-Federally Insured CDFI Credit Unions	FHFA
51.	2/10/2010	Expansion of Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity	FinCEN
52.	2/14/2010	Regulation Z Disclosures for Private Student Loans	FED
53.	2/22/2010	Regulation Z Rule Implementing the CARD Act	FED
54.	2/27/2010	Consolidation of Federal Reserve's Check-Processing Operations	FED
55.	5/21/2010	Interagency Policy Statement on Funding & Liquidity Risk Management	NCUA
56.	6/4/2010	Establishment of Term Deposits at Federal Reserve Bank	FED
57.	6/18/2010	Direct Access Registration Requirement	NACHA
58.	6/18/2010	Risk Management and Assessment	NACHA
59.	7/1/2010	Final Rules for Student Loans	Education
60.	7/1/2010	Regulation Z Open-end Credit Final Rule	FED
61.	7/1/2010	Regulation E Final Rule for Overdraft Protection Plans	FED

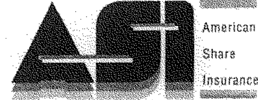
	Effective Date	Title of Final Rule	Agency
62.	7/1/2010	FACT Act Rules and Guidelines on the Accuracy of Credit Information	FTC
63.	7/1/2010	FACT Act Rules and Guidelines on the Accuracy of Credit Information	NCUA
64.	7/1/2010	NCUA Final Rule on Unfair and Deceptive Practices for Credit Cards	NCUA
65.	7/6/2010	Disclosures for Non-federally Insured Credit Unions	FTC
66.	7/26/2010	Chartering and Field of Membership (FOM): Community Credit Unions	NCUA
67.	8/2/2010	FedACH SameDay Service	FED
68.	8/5/2010	Low-Income Definition	NCUA
69.	8/16/2010	Payments Made in Settlement of Payment Card and Third-Party Network Transactions	IRS
70.	8/22/2010	Final Rule Implementing the CARD Act Provisions for Penalty Fees and Rate Reviews	FED
71.	8/22/2010	Regulation E Rules for Gift Cards	FED
72.	9/2/2010	Display of Official Sign; Permanent Increase in Standard Maximum Share Insurance Amount	NCUA
73.	9/7/2010	Clarifications of Reg E and Reg DD Overdraft Rules	FED
74.	9/7/2010	Clarifications on Reg DD Overdraft Protection Rules	NCUA
75.	10/1/2010	SAFE Act	NCUA
76.	10/4/2010	FHA Risk Reduction Final Rule	HUD
77.	10/18/2010	Reverse Mortgage Guidance	NCUA
78.	10/25/2010	RegFlex Program Changes	NCUA
79.	10/25/2010	Short-Term, Small Amount Loans	NCUA
80.	11/29/2010	Extension of CARD Act Effective Date for Gift Cards	FED
81.	12/23/2010	Conversions of Insured CUs: Definition of Regional Director	NCUA
82.	12/31/2010	Model Privacy Notices	NCUA
83.	1/1/2011	FACT Act Risk-Based Notice Rule	FED
84.	1/1/2011	Consumer Notification of Mortgage Loan Sales or Transfers	FED
85.	1/1/2011	Notice Regarding Charges Permitted Under the FCRA	FTC
86.	1/1/2011	Mobile ACH Payments	NACHA
87.	1/3/2011	Confidentiality of Suspicious Activity Reports	FinCEN
88.	1/18/2011	Corporate Credit Union Rule	NCUA
89.	1/20/2011	IRPS 11-1 Supervisory Review Committee	NCUA
90.	1/27/2011	Fiduciary Duties at Federal Credit Unions, and Mergers and Conversions of Insured Credit Unions	NCUA
91.	1/30/2011	Interim Final Rule on Disclosures Required under the Mortgage Disclosure Improvement Act	FED
92.	1/31/2011	Extension of CARD Act Gift Card Rules	FED
93.	3/14/2011	Conversions of Insured Credit Unions: Definition of Regional Director	NCUA
94.	3/23/2011	Corporate Credit Unions: Technical Corrections	NCUA
95.	3/23/2011	PCA: Amended Definition of "Low-Risk Assets	NCUA

	Effective Date	Title of Final Rule	Agency
96.	3/24/2011	Garnishment of Accounts Containing Federal Benefit Payments	Treasury
97.	3/28/2011	Amendment to BSA Regulations: Reports of Foreign Financial Accounts	FinCEN
98.	3/28/2011	IRPS: Chartering Corporate Federal Credit Unions	NCUA
99.	4/1/2011	Interim Final Rule on Appraisal Independence	FED
100.	4/1/2011	Loan Compensation and "Steering" of Loans	FED
101.	4/4/2011	Temporary Minimum Capital Increase for FHFA Regulated Entities	FHA
102.	6/24/2011	Technical Correction - Golden Parachute and Indemnification Payments	NCUA
103.	6/24/2011	Temporary Unlimited Share Insurance for Noninterest-bearing Transaction Accounts	NCUA
104.	6/27/2011	Golden Parachute and Indemnification Payments	NCUA
105.	7/21/2011	Consumer Financial Rules to be Enforced by the CFPB	CFPB
106.	7/22/2011	Regulation D Interim-Final Rule Implementing the Alternative Mortgage Transaction Parity Act	CFPB
107.	7/25/2011	Sample Income Data to Meet the Low-income Definition	NCUA
108.	7/27/2011	Remittance Transfers Interim Final Rule	NCUA
109.	8/10/2011	Technical Corrections & Clarifying Amendments to RESPA Regulations	HUD
110.	8/15/2011	Fair Credit Reporting Risk-Based Pricing (Credit Score Disclosures)	FED
111.	8/15/2011	Regulation B - Equal Credit Opportunity Act (Credit Score Disclosures)	FED
112.	8/19/2011	Mortgage Acts & Practices - Advertising Rule	FTC
113.	8/29/2011	SAFE Mortgage Licensing Act: Minimum Licensing Standards and Oversight Responsibilities	HUD
114.	10/1/2011	CARD Act Clarifications	FED
115.	10/1/2011	Debit Interchange Fee and Routing Regulations (Regulation II)	FED
116.	10/1/2011	Federal Reserve Board's Interim Final Rule on the Interchange Fee Fraud-Prevention Adjustment	FED
117.	10/19/2011	Indorsement and Payment of Checks Drawn on the United States Treasury	Treasury
118.	10/31/2011	Net Worth & Equity Ratio	NCUA
119.	11/14/2011	Notification of Employee Rights under the National Labor Relations Act	Labor
120.	11/30/2011	NCUA Remittance Transfers Rule	NCUA
121.	12/2/2011	Community Development Revolving Loan Fund (CDRLF) Access for Credit Unions	NCUA
122.	12/23/2011	Low-Income Designation – Technical Amendment	NCUA
123.	1/1/2012	Accuracy of Advertising and Notice of Insured Status	NCUA
124.	1/23/2012	Corporate Credit Union Rule – Technical Amendment	NCUA

	Effective Date	Title of Final Rule	Agency
125.	4/19/2012	Guidance on Reporting Interest Paid to Nonresident Aliens	IRS
126.	5/31/2012	Corporate Credit Union Follow-up Rule	NCUA
127.	6/29/2012	Rules of Practice for Adjudication Proceedings	CFPB
128.	6/29/2012	Rules Relating to Investigations Final Rule	CFPB
129.	7/2/2012	Regulatory Flexibility Program	NCUA
130.	7/2/2012	Regulatory and Reporting Treatment of Troubled Debt Restructurings	NCUA
131.	7/12/2012	Regulation J (Collection of Checks and Other Items by Federal Reserve Banks, Etc)	FED
132.	7/12/2012	Regulation D (Reserve Requirements of Depository Institutions: Reserves Simplification)	FED
133.	8/16/2012	Confidential Treatment of Privileged Information Final Rule	CFPB
134.	9/17/2012	End-User Exemption to the Mandatory Clearing of Swaps	CFTC
135.	9/30/2012	Interest Rate Risk Policy and Program Final Rule	NCUA
136.	10/1/2012	Debit Interchange Fee and Routing Regulations (Regulation II) -Fraud	FED
137.	11/23/2012	Delayed Implementation of Certain New Mortgage Disclosures	CFPB
138.	11/30/2013	Reserve Requirements of Depository Institutions	FED
139.	12/13/2012	Fidelity Bond	NCUA
140.	12/15/2012	Guidance on Troubled Debt Restructurings	FASB
141.	1/18/2013	Treasury Tax and Loan Depositaries; Depositaries and Financial Agents of the Government Final Rule	NCUA
142.	2/7/2013	Remittance Transfers Final Rule - Delayed	CFPB
143.	2/7/2013	Remittance Transfers Final Rule (Safe Harbor, Preauthorized Transfers) - Delayed	CFPB
144.	2/19/2013	Acceptance Deadline - Low-Income Designation Final Rule	NCUA
145.	2/19/2013	Definition of a "Small Credit Union" Final Rule	NCUA
146.	2/19/2013	Definition of "Troubled Condition" Final Rule	NCUA
147.	3/29/2013	Investment and Deposit Activities (TIPS)	NCUA
148.	6/1/2013	Escrow Accounts Final Rule (Reg Z)	CFPB
149.	6/11/2013	Alternatives to the Use of Credit Ratings	NCUA
150.	7/1/2013	COPPA	FTC
151.	1/10/2014	Mortgage Loan Origination Compensation	CFPB
152.	1/10/2014	Mortgage Servicing Final Rule - Reg X	CFPB
153.	1/10/2014	Mortgage Servicing Final Rule - Reg Z	CFPB
154.	1/10/2014	Ability to Repay / QM Final Rule	CFPB
155.	1/18/2014	Regulation B - Copies of Appraisals Final Rule	CFPB
156.	1/18/2014	Interagency Higher-Priced Mortgage Appraisal Requirements	NCUA
157.	12/31/2015	FATCA Final Rule	IRS

5656 Frantz Road, Dublin, Ohio 43017
614.764.1900 Fax 614.764.1493
800.521.6342

mail@americanshare.com
www.americanshare.com



American
Share
Insurance

April 9, 2013

The Honorable Jeb Hensarling
Chairman

The Honorable Maxine Waters
Ranking Member

The Financial Services Committee
U.S. House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman and Ranking Member Waters:

I am writing to thank you for holding hearings on the need for regulatory relief for community financial institutions, and specifically this hearing's focus on credit unions.

The reason for this letter is to advocate on behalf of 140 credit unions in the United States that are privately insured by American Mutual Share Insurance Corporation (ASI). On behalf of these credit unions, ASI is seeking a small statutory change that would afford non-federally insured credit unions the right to apply for membership in the Federal Home Loan Bank System (FHLB System). This change would aid small credit unions in making more mortgage, consumer and small business loans by allowing them access to a key source of liquidity for small institutions. The vast majority of these non-federally insured credit unions are community oriented serving teachers, firefighters, local governments, medical service providers, policemen, laborers and medium-sized businesses. None of these institutions have assets greater than $1 billion.

We would request that this amendment be a part of any regulatory relief initiative that moves forward in the House. As background, the House has passed legislation calling for this change twice before; in 2004 and 2006. Mr. Chairman, it was with your help in 2006 that the House passed a comprehensive regulatory relief bill for financial institutions, and we were pleased that the legislation included this provision.

In the last Congress, Congressman Steve Stivers (R-OH) and Andre Carson (D-IN) introduced H.R. 6105, a bi-partisan bill, to seek support for this change. Nothing in this proposal would require membership in the FHLB System be automatically approved, it would simply afford these consumer-oriented institutions the right to apply for membership like any other state-chartered credit union in the U.S.

Currently, non-federally insured credit unions operate in nine states, Ohio, Indiana, Illinois, Idaho, Nevada, Alabama, Maryland, Texas and California. Private insurance is an option left to the approval of each individual state credit union authority in those states whose legislature provides their credit unions with such choice. Collectively, these institutions hold approximately $13 billion in assets, and we do not anticipate that all of these institutions will apply for membership, so the impact on the FHLB System will be relatively minor.

When federal insurance was first statutorily put in place for credit unions in 1971, the Federal Credit Union Act made federal insurance optional for all state-chartered credit unions. Thus, only state-chartered credit unions that operate in states that permit private insurance can have deposits insured by ASI. These privately insured credit unions must comply with the same state laws that govern state-chartered, federally insured credit unions. Further, in 1991, the Congress enacted legislation requiring clear and concise disclosures to consumers about private insurance, which resulted in regulations being implemented by the FTC to assure such compliance. Currently, the CFPB administers and regulates compliance with the FTC's regulations as directed under Dodd-Frank.

ASI has operated since 1974 and is regulated by both the Ohio Department of Insurance and Department of Financial Institutions in Ohio and state credit union authorities in the eight other states of operation. In over 38 years of insuring consumer deposits, no individual has ever lost money in an ASI-insured account.

As a point of reference, the FHLB System currently has over $400 billion in total outstanding advances (loans), and 1,108 federally insured credit unions currently belong to the FHLB System out of a total of about 6,900 credit unions that are eligible to join nationally. The FHLB System represents the largest collective source of home mortgage and community credit in the United States.

The FHLB System was founded in 1932, *notably, before the existence of federal deposit insurance*, and insurance companies were (and are) part of the original membership, along with Savings and Loans and CDFIs. In fact, insurance companies presently borrow more money from the FHLB System than all 1,108 credit unions combined. *More importantly, the requirement that an institution be federally insured to be a part of the FHLB System has never been true.*

In the aftermath of the savings and loan crisis, in 1989, when the FHLB System was expanded, commercial banks and credit unions were allowed, for the first time, to become members of the FHLB System. Unfortunately, the definition of a financial institution was used in such a way as to prevent state-chartered, *privately insured credit unions* from applying for membership. If the Congress at the time had used the definitions of a "state credit union" found under Section 101 of the Federal Credit Union Act, we do not think this would be an issue today.

The Honorable Jeb Hensarling
The Honorable Maxine Waters
April 9, 2013
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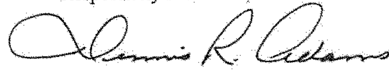
We thank you in advance for your consideration of this issue and look forward to working with you to correct this oversight.

Respectfully submitted,



DENNIS R. ADAMS
President/CEO

DRA/jrd

C O A L I T I O N F O R
CREDIT UNION ACCESS

Statement for the Record of
The Coalition for Credit Union Access

For the Hearing on

"EXAMINING CREDIT UNION REGULATORY BURDENS"

Before

The Subcommittee on Financial Institutions and Consumer Credit
Of the Committee on Financial Services
United States House of Representatives

April 10, 2013

Coalition for Credit Union Access
1601 K Street, NW
Washington, DC 20006
T: (202) 661-3764 ▪ F: (202) 778-9000
www.creditunionaccesscoalition.com

Chairman Capito, Ranking Member Meeks, and members of the House Financial Services Financial Institutions Subcommittee, thank you for the opportunity to submit this statement for the record on behalf of the Coalition for Credit Union Access ("CCUA").

CCUA is a broad-based coalition representing federal and state chartered credit unions of all asset sizes and geographic diversity and state credit union leagues. Coalition members are united in their belief that access to supplemental capital is critical to credit unions' ability to continue to serve their historical role as sources of affordable financial services and as important sources of credit necessary to secure a lasting economic recovery in the broader economy. Access to supplemental capital is essential to the long-term health and sustainability of the credit union system.

CCUA commends the Subcommittee for convening this hearing to examine credit union regulatory burdens and the impact on credit unions' ability to serve their members' needs. CCUA would encourage the Subcommittee to take a broad view and to consider reforms that would expand consumer access to affordable financial services and expand the availability of affordable credit to benefit the economic recovery and facilitate job growth. Specifically, CCUA strongly urges enactment of H.R. 719, the "Capital Access for Small Businesses and Jobs Act," legislation authorizing the National Credit Union Administration ("NCUA") to allow credit unions access to supplemental capital. H.R. 719 is a bipartisan solution that is supported by the credit union industry and its regulators.

Current Capital Requirements Make it Difficult for Credit Unions to Grow to Serve Their Members' Needs

Current law restricts the ability of credit unions to build capital, limiting their ability to serve their members. Credit unions can build capital only through retained earnings. Retail credit unions (those that people join through their workplace or community) do not have access to any other form of capital.

Since a change in law in 1998, "net worth" has been defined in statute exclusively as retained earnings as a percentage of total assets. The statutory definition of net worth is overly restrictive. Anytime an influx of new deposits outpaces growth in retained earnings, a credit union is at risk of diluting its net worth ratio and being subject to nondiscretionary supervisory actions. In large part, this is an issue of timing. Retained earnings can only be accumulated over time, whereas new deposits are much less predictable. As a result, credit unions may be forced to manage their regulatory capital ratios by discouraging deposits by reducing returns, closing branches or curtailing plans to expand their service area, reducing employment, and charging higher interest rates on loans, thereby limiting their services and value to their members. This harms consumers and small businesses that need help most.

No other federally-insured depository institution is subject to the same limitations on capital. Retail credit unions are the only federally-insured financial depository institutions that do not have access to any form of supplemental capital. Even among credit unions this constraint is unique. Under current law, low-income designated credit unions and corporate credit unions, which also operate as not-for-profit financial cooperatives, already have access to supplemental capital. The experience of low-income credit unions and corporate credit unions with supplemental capital has been a success, improving capital ratios while promoting institutional growth, lending, and stability.[1] Unfortunately, under current law the great majority of credit unions do not have access to supplemental capital.

The unprecedented financial and economic stress of the past few years has reinforced the importance of capital and the need for flexibility with respect to capital requirements. Federal banking regulators have for many years had the authority and flexibility to adjust capital requirements in response to changes in economic and financial conditions. This is sound policy. Congress should likewise provide the NCUA with the authority to allow qualified credit unions to augment their retained earnings with supplemental capital as a means of managing their net worth levels under varying economic conditions.

[1] *See* "Critical Capital: How Secondary Capital Investments Help Low-Income Credit Unions Hit Their Stride," Woodstock Institute (2002) at 3.

Access to Supplemental Capital Would Allow Credit Unions to Expand Consumer Access to Affordable Financial Services and Help Grow the Economy and Jobs

H.R. 719, the "Capital Access for Small Businesses and Jobs Act," would empower the NCUA to authorize qualified credit unions access to supplemental capital to enhance their ability to serve their members. Access to supplemental capital would allow credit unions to grow with their members' needs, increase services, provide more attractive rates, and increase private credit in the market at a time it is needed most.

Supplemental capital is a tool that would help well-managed credit unions, large and small, meet their members' demand for affordable financial services. Supplemental capital could take various forms. For example, it could take the form of a voluntary or mandatory membership subscription in a permanent capital account of a credit union. Alternatively, it could take the form of a subordinated debt type instrument. The NCUA will have the flexibility to determine the most appropriate types of supplemental capital that may be offered, consistent with the parameters established by H.R. 719 and subject to appropriate suitability requirements and consumer protections.

Among other conditions, H.R. 719 expressly requires the preservation of a credit union's unique status as a not-for-profit financial cooperative as a precondition to any form of supplemental capital. This is a bedrock principle of the legislation. H.R. 719 would also limit supplemental capital to only those credit unions that are determined by the NCUA to be sufficiently-capitalized and well-managed and ensures that the NCUA is provided additional regulatory authority to establish appropriate regulations governing consumer protection and disclosure requirements.

Access to supplemental capital would enhance credit unions' ability to serve their members by taking deposits, opening new branch locations, and expanding service offerings for members. Supplemental capital would also improve credit unions' ability to help families and small businesses that need access to affordable credit. Access to credit for consumer loans, mortgages, auto loans, and small business loans continues to be limited. Credit unions are a key

source of private lending in their communities. H.R. 719 would allow credit unions to do even more to help stimulate an economic recovery and job growth. Recent modeling demonstrates that a one percent increase in capital across the credit union system would allow $7.149 billion in additional lending.

Federal (NCUA) and state credit union regulators strongly support supplemental capital for credit unions. From a safety and soundness perspective, access to supplemental capital will strengthen the credit union system and provide additional protection for claims against the credit union share insurance fund.

Conclusion

H.R. 719 is commonsense, bipartisan legislation that is supported by the credit union industry and its regulators. H.R. 719 reflects a policy determination to expand consumer access to affordable financial services and affordable credit by allowing credit unions access to supplemental capital. We strongly urge Congress to enact H.R. 719.

CCUA greatly appreciates the opportunity to submit this statement for the record. We are pleased to serve as a resource to Congress, the Committee, and the Subcommittee and we look forward to our continued work together on these important issues.