



Credit Union National Association

cuna.org

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January 5, 2011

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
Washington, DC 20515

Dear Chairman Issa,

On behalf of the Credit Union National Association (CUNA), I am writing in response to your letter of December 10, 2010, requesting information on regulations that have had a negative effect on job growth in the credit union system. CUNA is the nation's largest credit union advocacy organization, representing approximately 90 percent of the 7,700 state and federal credit unions in the United States and their 93 million members.

Relieving credit unions' regulatory burden is a key objective for CUNA. Credit unions are not-for-profit financial cooperatives; the only owners of a credit union are its members, who receive the benefit of ownership through reduced fees, lower interest rates on lending products and higher dividends on savings products. Because of this structure, the cost of a credit union's compliance with unnecessary and unduly burdensome regulation impacts its members more directly than bank customers. Every dollar that a credit union spends complying with regulation is a dollar that is not used to the benefit of the credit union's membership.

Credit unions support reasonable safety and soundness rules as well as meaningful consumer protection laws. However, the fact is that credit unions are the most highly regulated financial institutions in the United States, and the regulatory burdens continue to multiply with little or no regard for the costs of each requirement or the cumulative impact on the institutions that must comply.

In addition to the regulatory hurdles that have a negative effect on job growth, there are also statutory constraints that keep credit unions from doing more to help their members promote job creation and economic growth. In response to your request for information, we will discuss both the statutory and regulatory hurdles, noting that we also intend to raise these issues with the Committee on Financial Services.

Regulation of Debit Interchange

For credit unions and their members, the most chilling effect of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* will be the implementation of Section 1075 related to the regulation of interchange fees.¹

¹ 15 USC 920, 921 and the Federal Reserve Board's proposed rule issued December 16, 2010.



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Seventy percent of credit unions offer debit cards to their members; while the statute exempts issuers under \$10 billion in total assets (all but three credit unions) from the regulations promulgated by the Federal Reserve Board, we have long held that the exemption is meaningless because the law does not explicitly extend to the Board the authority to enforce the exemption, and nothing in the law requires the payment card networks to operate a two-tier interchange system to protect the smaller issuers. Without a meaningful way to enforce the exemption, smaller issuers may be subjected to the same, severe limitations on debit interchange fees that the Board has proposed for large issuers.

Complicating matters further, the law only permits the Board to consider a very limited set of cost factors when setting the debit interchange rate. Because the Board cannot consider all costs when setting the rate, the rate that it sets will necessarily be lower than the costs of providing the service. It is a reasonable – but at this point academic – question: should the federal government be setting rates in the first place? However, if the government is going to set a rate, the rate ought to be high enough to cover the costs of providing the service. The Board's proposed rate of 12 cents per transaction is estimated to result in a 70% decrease in interchange revenue. As a result, credit unions and other issuers – including those Congress intended to exempt from the regulation – will have to find other ways to cover the costs of providing these services.

The implementation of this provision of the *Dodd-Frank Act* will absolutely hit the pocketbooks of Americans holding debit cards. Anecdotally, credit union executives have told us they may be forced to impose monthly checking account fees in the neighborhood of \$15-\$20. This is heartbreaking for managers of credit unions who work every day to reduce the cost of access to financial services for their members. Congress needs to repeal this provision of the *Dodd-Frank Act* before those who are least able to afford it end up paying for it. Recognizing that the process of repealing this provision will take some time, we encourage the Committee, in conjunction with the Committee on Financial Services, to encourage the Board to delay the implementation of its proposed rule.

Credit Union Net Worth Restrictions

If there has been one lesson learned from the recent financial crisis, it is that, for financial institutions, capital is king. Financial regulators in the United States and around the globe have been looking at ways to increase capital requirements for banks and other financial institutions in order to ensure that we never again experience failures like those that were caused by the recent crisis. It is in everyone's best interest that all financial institutions – including credit unions – have access to the capital building tools necessary to meet reasonable capital standards.

Credit unions are the only depository institutions in this country that do not have the legal authority to supplement their capital by issuing capital instruments. And, credit

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unions are the only depository institutions in the United States that must meet specific capital levels set by statute – not only by regulation – or face asset restrictions and other sanctions that limit growth. The *Federal Credit Union Act* requires credit unions to have 7% net worth to be considered well-capitalized and 6% net worth to be adequately capitalized.²

Over the last two years, as many banks have failed and depositors have sought the safety and stability of credit unions, some credit unions have had to turn away members' deposits or ask members to withdraw deposits in order to retain their current net worth level or increase it. Credit unions exist to serve members, not turn them away.

Compounding the problem for credit unions are examiners who, in the current economic environment, expect even higher net worth, which credit unions can only build through retained earnings. While sufficient capital is important to individual credit unions as well as the system as a whole, maintaining arbitrarily high capital levels may result in credit unions having to curtail services or outreach to their communities so that their net worth ratios will not be negatively affected.

We will be asking Congress to permit the use of supplemental capital instruments to boost credit unions' net worth and permit them to continue to fully serve their members. We hope that the Committee, in conjunction with the Committee on Financial Services, will give some attention to the inconsistent and arbitrary standards being applied by field examiners.

Member Business Lending Cap

Credit unions have been providing business loans to their members since they were first established in the United States over one hundred years ago. They want to lend more to their members who own small businesses, but they are restricted in the amount they can lend by a statutory cap imposed in 1998.

In the last Congress, when the Administration proposed spending \$30 billion of taxpayer money to encourage community banks to lend to small businesses, credit unions encouraged Congress to pass legislation to increase the credit union member business lending cap from its current level, 12.25% of total assets to 27.5% of total assets. The National Credit Union Administration, the federal regulator for credit unions, has testified that any risk associated with additional credit union business loans is manageable and that the cap is not needed for safety and soundness reasons.

² 12 USC 1790d and 12 CFR 702.

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Bipartisan legislation (H.R. 3380 and S. 2919) was introduced in both chambers in 111th Congress. Mr. Chairman, we appreciate your having cosponsored this legislation, which also earned the endorsement of the Obama Administration. We estimate that if this legislation became law, credit unions could lend \$10 billion to their small business owning-members within the first year of implementation, helping to create over 100,000 new jobs. This proposal is economic stimulus that does not cost the taxpayers a dime, and would not increase the size of government. It is a commonsense proposal that Congress should swiftly enact.

NCUA's Regulatory Flexibility Program

In 2001, NCUA adopted the "Regulatory Flexibility (RegFlex) Program" to allow well managed credit unions to avoid a limited number of requirements that were imposed on credit unions by the agency and not directly required by statute.³ This program was substantially curtailed by the agency in October 2010. The result will be increased compliance costs for the many credit unions that were eligible to participate in the RegFlex program.

NCUA Budget

In late 2010, the NCUA approved a 12% budget increase for fiscal year 2011 that features a 6.1% salary adjustment for agency union workers, a 3% increase for other NCUA personnel, and funding for several new positions. Unlike other federal agencies which receive appropriations from Congress, NCUA is funded almost exclusively by credit unions. Credit unions are extremely concerned that, at a time when they are having to cut back on staff and other resources, NCUA is expanding its budget and workforce in a manner that is inconsistent with the rest of the federal government.

We have urged NCUA to constrain its budget and to look for ways to minimize costs, and we hope the Committee will do the same. We also believe that it would be beneficial for the Government Accountability Office (GAO) to regularly conduct an analysis on the allocation of resources and budget processes for federal financial regulators.

Examination Practices

Particularly since the onset of the recession, credit unions have raised serious concerns about examiner practices that seek to eliminate risk rather than allow credit unions to manage it through exercising business judgment. Increasingly, examiners are skipping less onerous directives and imposing harsh sanctions when issues arise that the examiner feels need to be addressed, even when the credit union is adequately or well-capitalized.

³ 12 CFR 742.

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CUNA and credit unions support reasonable safety and soundness regulation, but examiner micromanagement, which is being reported to us by credit unions across the country, needlessly constrains credit unions' ability to serve their members and support their communities.

Recommendations

The need for regulatory reform for credit unions has never been more critical. While we have discussed a number of concerns in this letter, these just begin to scratch the surface of regulatory hurdles and burdens that prevent credit unions from serving their members even better. The Committee, in conjunction with the Committee on Financial Services, can play a critical role in helping credit unions do even more to help boost the economy and create jobs by supporting the following recommendations for regulatory improvements:

- Eliminate or increase the statutory cap on credit union business lending.
- Amend the statutory capital restrictions to allow credit unions to strengthen their net worth with supplemental capital.
- Review how the exemption for small issuers under Section 1075 of the *Dodd-Frank Act* can be implemented to protect small issuers, as Congress intended.
- Encourage NCUA and state regulators to reward well-run credit unions by imposing fewer regulatory burdens on them. Specific examples of reduced burdens include:
 - Streamlined 5300 (call) reports
 - 18-month examination cycle (instead of 12 months)
 - Automatic waivers from regulatory limitations that are not required by statute.
- Encourage the NCUA to follow federal agency guidelines for salary levels and adjustments for agency personnel.
- Direct the GAO to regularly conduct an analysis and report to Congress on the allocation of resources and budget processes for federal financial regulators.
- Direct the GAO to conduct a review and report to Congress on federal financial regulators' compliance with the *Paperwork Reduction Act* and *Regulatory Flexibility Act*, which requires regulators to take into account the impact of their rules on small institutions.
- Require federal financial regulators to report to Congress annually on steps they have taken in the previous year to reduce the regulatory burden on the institutions they supervise.
- Examine the extent to which the objectives of the *Bank Secrecy Act* and related requirements are being met and recommendations to dramatically reduce the burden associated with these requirements.
- Direct the BCFP to conduct a study and present recommendations on statutory and regulatory improvements to reduce regulatory burdens on financial institutions, consistent with the requirement under the *Dodd-Frank*

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Act that the Bureau identify and address unnecessary, outdated and unduly burdensome requirements.

Conclusion

We appreciate your recognition of the significant costs to our communities and the economy in general associated with the growing regulatory burden faced by credit unions. We applaud your review of these burdens and welcome the opportunity to discuss these issues further with you and your staff. Please do not hesitate to contact me if there is additional information that you need. On behalf of America's credit unions, thank you very much for your consideration of our concerns and recommendations.

Best Regards,

A handwritten signature in black ink, appearing to read 'Bill Cheney', with a long, sweeping horizontal line extending to the right.

Bill Cheney
President & CEO

cc: The Honorable Elijah Cummings, Ranking Member, Committee on Oversight and Government Reform
The Honorable Spencer Bachus, Chairman, Committee on Financial Services
The Honorable Barney Frank, Ranking Member, Committee on Financial Services
The Honorable Deborah Matz, Chairman, National Credit Union Administration