



Credit Union National Association

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July 14, 2009

The Honorable Barney Frank  
Chairman  
Committee on Financial Services  
United States House of Representatives  
Washington, DC 20515

Dear Chairman Frank,

On behalf of the Credit Union National Association (CUNA), I am writing regarding H.R. 3126, the Consumer Financial Protection Agency Act of 2009. CUNA is the largest advocacy organization for credit unions in the United States, representing about 90 percent of the nation's approximately 8,000 state and federal credit unions, and their 92 million members.

We appreciate the opportunities we have had to meet with Treasury Secretary Geithner, and Assistant Secretary of the Treasury for Financial Institutions Michael Barr, regarding the proposed Consumer Financial Protection Agency (CFPA) and commend the various Congressional and Administration officials that recognize that credit unions offer products in a way that benefits consumers. As Assistant Secretary Barr said last week in testimony before the House Energy and Commerce Committee:

"Closely regulated credit unions and community banks with straightforward credit products struggle to compete with less scrupulous providers who appear to offer a good deal and then pull a switch on the consumer."<sup>1</sup>

Credit unions are unique among all financial institutions in that they are not-for-profit financial cooperatives, which are owned and controlled by their members. As a result, credit unions' motives and mission are different than their counterparts in the for-profit financial sector. Credit unions have a special obligation to balance the consumer needs of their members with the business interests of the credit union.

Consumers of financial products, especially for consumers of products and services provided by currently unregulated entities, need greater protections, and CUNA agrees that a CFPA could be an effective way to achieve that protection, provided the agency does not impose duplicative or unnecessary regulatory burdens on credit unions. In order for a CFPA to work, consumer protection regulation must be consolidated and streamlined; it should not add to the regulatory burden of those that have been regulated and performed well, such as credit unions.

<sup>1</sup> Testimony of Michael Barr before the House Energy and Commerce Committee. July 8, 2009. 4



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Credit unions applaud the leadership that you and the President have demonstrated by proposing a mechanism through which the unregulated and under-regulated will be subject to appropriate regulatory standards and scrutiny.

In light of the fact that it is widely acknowledged credit unions were not the cause of the problems we currently face, CUNA could support the creation of a CFPA if the following issues are satisfactorily addressed:

- 1. The CFPA should have complete rulemaking authority on consumer protection issues so long as the examination, supervision and enforcement of consumer protection are entrusted to each credit union's prudential regulator.**

One attractive feature of the various CFPA proposals is the *prospect* of reduced regulatory burden. Credit unions want to know more about how the new agency can reduce the overwhelming regulatory load which they now bear. If a single agency were responsible for writing the regulations for all consumer regulation, compliance could be streamlined, consumer understanding increased, and duplicative requirements eliminated. For instance, the reconciliation of the *Truth in Lending Act* and the *Real Estate Settlement Procedures Act* mortgage lending disclosures is strongly supported by credit unions.

However, credit unions are extremely concerned that the legislation will result in an additional set of annual examinations and that such examinations will be conducted by examiners who are not familiar with credit unions and do not understand or appreciate what makes them unique. Most credit unions are extremely small institutions relative to the largest banks and non-bank entities. Some have just a handful of employees. A separate consumer protection examiner will distract credit unions from their mission and divert resources away from serving their members.

We strongly feel the CFPA should have full authority to write the rules for consumer protection, but for regulated entities such as credit unions, the examination, supervision and enforcement of these regulations should be retained by the prudential regulator. The currently unregulated entities should certainly be examined by the CFPA. We would also support giving the CFPA back-up examination powers in exigent circumstances over regulated depository institutions, such as when complaints repeatedly arise about the implementation of a particular regulation.

- 2. Credit unions should have the ability to decide what products are appropriate to offer their membership, with a CFPA regulatory structure that does not stifle competition or innovation.**

Credit unions are very concerned with any proposal that mandates that they must first offer a member a "standard" financial product before offering that member a product of the credit union's choosing that may better meet their needs. Credit unions have a history of tailoring financial products to meet the needs of their members, either individually or as groups of members, based on their close

knowledge of their members. Any mandate that a generic product must first be offered before one that would work better for the consumer would increase costs for credit unions and could potentially confuse the members.

**3. Collection of depositor data by census tract should only be required of institutions for which similar data is not already collected by a federal or state regulator. There should be significant limits to the use of this data by the CFPB.**

We are concerned with the provisions of the proposed legislation requiring the CFPB to collect depositor data by census tract because these data collection requirements could increase credit unions' regulatory and reporting burdens. We urge Congress not to permit the CFPB to collect data on entities from which similar data is already being collected by their prudential regulator.

In January, the National Credit Union Administration (NCUA) inaugurated a data collection program for Federal credit unions under which membership profile data is obtained during each regulator examination. The data is uploaded to NCUA's central office and a membership income profile is generated using geo-coding software. NCUA also uses the 5300 report to obtain information on the financial services that credit unions offer their members. Credit unions believe this data collection program provides sufficient information on members' income levels and services provided and that additional data collection from credit unions in these areas would be redundant and burdensome.

**4. The operating expenses of the CFPB should be paid by federal appropriations with the exception of examination expenses which should be paid through examination fees levied on the institutions the CFPB examines.**

We believe that the operating expenses of the CFPB should be paid through federal appropriations and the expenses for examinations conducted by the CFPB should be paid through fees levied on the institutions that the CFPB examines. Credit unions would continue to pay for their examinations either through their NCUA operating fees or state supervisory assessments.

**5. The statutory mission of the CFPB must require that the agency streamline and modernize consumer protection regulation so as to minimize unnecessary regulatory burden. Duplicative and overlapping rules should be eliminated.**

As noted above, one of the most attractive features of this agency is the potential to streamline and modernize consumer protection regulation. As Professor Warren testified, "a single regulatory agency watching out for families and individuals can reduce the overall regulatory burden."<sup>2</sup> Assistant Secretary Barr has made similar statements: "The CFPB is not a new layer of regulation; it will consolidate existing

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<sup>2</sup> Testimony of Elizabeth Warren before the House Financial Services Committee. June 24, 2009. 5.

regulators and authorities. This will bring efficiencies for industry.”<sup>3</sup> We urge Congress to ensure that this vision becomes a reality.

Credit unions are the most highly regulated of all financial institutions. In addition to the consumer protection and other laws with which banks must also comply, credit unions have an extensive list of unique operating restrictions including defined fields of membership, limits on capital acquisition, statutory capital requirements, and severe limits on member business lending. In addition, Federal credit unions are subject to a Federal usury ceiling, limitations on loan maturities, and stringent limitations on their investment options.

It is very important to credit unions that any regulations adopted the CFPA have reasonable compliance effective dates and be amended in an orderly fashion so that regulations are not continually being revised. The Federal Reserve Board’s April- October schedule for Truth-in-Lending changes provides one model for how changes could be considered and adopted. Credit unions are understandably concerned that an agency with the sole mandate of developing and amending consumer law regulations will continually modify them to respond to new issues and complaints. A new CFPA must have procedures to assure that credit unions are not overwhelmed with regulatory revisions.

**6. Consistent with reducing regulatory burden, the federal rules adopted by the CFPA should preempt state rules applicable to the products covered by CFPA regulations.**

Credit unions strongly feel that for the mission of the CFPA to be fulfilled, Congress must take the understandably difficult step and preempt state consumer protection laws.

In order to achieve the regulatory simplicity that is a key objective for consumers and institutions alike under the new agency, there needs to be one rule of the road. If Congress creates a CFPA and its rules merely become the floor in terms of consumer protection, many state laws will remain or be passed, and the size and complexity of consumer disclosures will not adequately be resolved. In short, the consumer will not see the simplification benefits of this agency if there is not preemption.

We are well aware of the sensitivities of proposing federal preemption of state laws that address the same subjects as the authority given to the CFPA to cover financial services and products on credit, savings, payment products, and related services. We think state concerns could be addressed by giving states “a seat at the table,” so that they have direct and continued input into the regulations developed by the new federal agency. This could be achieved by designating one of the CFPA Board seats to be filled by a representative of a state consumer protection agency or a state Attorney General’s office or any other way the Committee finds appropriate, such giving a state representative a leadership role

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<sup>3</sup> Barr. 9.

in any CFPB advisory group approved by statute. As states identify consumer protection concerns that they might otherwise have sought state legislation or regulation to address, they can come to the CFPB and be assured to have someone designated to consider their views.

We urge Congress to preempt state consumer protection law when establishing the CFPB, and we are confident that by charging a single federal agency with the responsibility to regulate consumer protection law, as well as with rigorous Congressional oversight, more thorough consumer protection regulation will be achieved.

**7. The CFPB should have a larger Board that is statutorily inclusive of industry representatives, including credit unions.**

The Administration's proposal as well as H.R. 3126 would establish a five-person board to govern the CFPB. One of the five seats would be designated for the national bank regulator. We believe the CFPB Board needs to be larger than what has been proposed, and there should be seats on the board statutorily designated for industry representatives, a state or federal credit union regulator, and consistent with our statement above, possibly a state consumer agency representative. Industry representation would enhance the quality of regulation promulgated by the CFPB by ensuring both the consumer perspective as well as the industry perspective is represented in the decision-making process.

**Closing**

CUNA welcomes further opportunities to continue the dialogue with policy makers about the proposed agency. We will continue to review the various proposals to create a consumer agency and will undoubtedly have additional thoughts or concerns as the deliberative process continues. As the Committee proceeds to consider this legislation, we look forward to working with you and would be happy to discuss these issues further.

On behalf of America's credit unions and their 92 million members, thank you very much for your consideration.

Sincerely,



Daniel A. Mica  
President & CEO