



Credit Union National Association

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September 30, 2009

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

The Honorable Spencer Bachus  
Ranking Member  
Committee on Financial Services  
United States House of Representatives  
Washington, DC 20515

Dear Chairman Frank and Ranking Member Bachus:

On behalf of the Credit Union National Association (CUNA), I am writing regarding today's hearing entitled, "Perspectives on the Consumer Financial Protection Agency." CUNA represents approximately 90 percent of America's 8,000 credit unions and their 92 million members.

Consumers of financial products—especially consumers of products and services provided by currently unregulated entities—need greater protections. An agency with the primary mission of consumer protection could be an effective way to achieve that protection, provided it does not impose duplicative or unnecessary regulatory burdens on credit unions. Credit unions did not in any way contribute to the current financial debacle and their current regulatory regime, coupled with their cooperative structure, militates against credit unions ever contributing to a financial crisis.

We have been carefully following the development of legislation to create a Consumer Financial Protection Agency (CFPA) because its enactment could significantly affect credit unions. Following up on our letter to you of July 14, 2009, we would like to discuss our views on the latest draft of CFPA legislation.

In our view, the discussion draft takes several steps in the right direction, including clarifying that credit unions will not be required to offer a plain vanilla financial product before offering a product that better meets the needs of the member, providing the Chairman of the National Credit Union Administration a seat on the CFPA Oversight Board, and directing the CFPA Director to take into account disclosure requirements under other laws in order to enhance consumer compliance and reduce regulatory burden. The discussion draft also includes several provisions designed to ensure that the CFPA does not result in an increase in fees and assessments on depository institutions.



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Nevertheless, we remain concerned that the language in the discussion draft does not go far enough to ensure that the agency seek ways to reduce regulatory burden on credit unions and eliminate duplicative and redundant regulation. Additionally, there are several other areas that remain of great concern to credit unions, including the examination and enforcement authorities conveyed to the CFPA, the treatment of credit insurance products, the collection of depositor data, and the treatment of state consumer protection law. As the Committee proceeds to mark-up the Consumer Financial Protection Agency Act, we hope these concerns will be given serious consideration.

*Examination, Supervision and Enforcement*

Credit unions remain concerned that the legislation will result in additional, annual examination requirements they will have to prepare for and fund, and that those examinations will be conducted by examiners who are not familiar with credit unions and do not understand or appreciate what makes them unique.

As we indicated in our July letter, we believe that 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, with all consumer protection exam reports and actions shared with the CFPA. The currently unregulated entities should certainly be examined by the CFPA. We would also support giving the CFPA back-up examination powers over regulated depository institutions, such as when material complaints repeatedly arise about the implementation of a particular regulation. We would also support the ability of CPFA examiners to examine regulated depository institutions on a random, backup basis.

Most policymakers with whom we speak, both in Congress as well as within the administration, tell us that credit unions ought not to worry about the examinations because of how credit unions offer products to their members. We agree completely. Credit unions are not concerned about the results of a separate consumer protection examination; credit unions question the necessity for a separate examination given the fact that credit unions are largely viewed as offering consumer-friendly financial products, and the abuses that precipitated the crisis did not emanate from the credit union system.

The concern credit unions have is how this new examination authority will affect service to credit union members. 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 appreciate the language in the current discussion draft that would require the CFPA to coordinate examinations with an institution's prudential regulator, but we have concerns about how this coordination would work.

Moreover, the discussion draft appears to envision scenarios in which credit unions could receive conflicting guidance from their safety and soundness examiner and the CFPA examiner. The creation of an administrative proceeding to resolve these disputes may be well-intentioned and necessary, but it also helps illustrate the structural problem that the legislation creates by subjecting credit unions to examinations by entities with different core interests. Additionally, the dispute resolution process will increase costs for credit unions that

may become involved in the process. We feel strongly that credit union members will ultimately be better served if the prudential regulator has primary responsibility for the examination, supervision and enforcement of consumer protection laws.

*Regulatory Consolidation and Modernization*

The CFPA legislation represents an important opportunity to begin the long process of consolidating and modernizing the various consumer protection statutes and regulations. Over the course of the last several decades, the current consumer protection laws have been layered on top of each other producing duplicative mandates and disclosures.

These duplicative and overlapping rules are draining the resources of many credit unions and must be eliminated. We have been heartened by the comments of proponents of this legislation who tout the potential for the reduction of regulatory burden. As Harvard University Professor Elizabeth Warren testified, "a single regulatory agency watching out for families and individuals can reduce the overall regulatory burden."<sup>1</sup> Assistant Treasury Secretary Michael Barr has made similar statements: "The CFPA is not a new layer of regulation; it will consolidate existing regulators and authorities. This will bring efficiencies for industry."<sup>2</sup>

The potential for compliance to be streamlined, consumer understanding increased, and duplicative requirements eliminated is one of the attractive features of a single agency responsible for writing the regulations for all consumer regulation. For instance, the reconciliation of the *Truth in Lending Act (TILA)* and the *Real Estate Settlement Procedures Act (RESPA)* mortgage lending disclosures is strongly supported by credit unions. We continue to urge Congress to ensure that this vision becomes a reality.

In July, we asked you to consider changes to H.R. 3126 that would require the CFPA to streamline and modernize consumer protection regulation to minimize unnecessary regulatory burden. We appreciate that Section 132 of the discussion draft states, "the Director shall take into account disclosure requirements under other laws in order to enhance consumer compliance and reduce regulatory burden." However, we hope the Committee will consider additional language to ensure that going forward the agency seek ways to minimize the burden its regulations will have on credit unions.

Credit unions are also 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. We encourage the Committee to ensure that regulations adopted by the CFPA have reasonable compliance effective dates and are amended in an orderly fashion so that regulations are not continually being revised. The Federal Reserve Board's April-October schedule for TILA changes provides one model for how changes could be considered and adopted.

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<sup>1</sup> Testimony of Elizabeth Warren before the House Financial Services Committee. June 24, 2009. 5.

<sup>2</sup> Testimony of Michael Barr before the House Energy and Commerce Committee. July 8, 2009. 9.

#### *Treatment of Credit Insurance*

CUNA is concerned that credit life and credit disability insurance products have been included as a covered product in this legislation, while all other forms of life insurance are specifically excluded from the purview of the proposed CFPA. We believe that CFPA regulation of credit life and disability insurance would be duplicative and would also add an additional compliance burden on credit unions that offer these financial products to their members. That is because the proposed CFPA would have indirect regulatory authority over these products by virtue of its authorities under the TILA and the *Home Owners Equity Protection Act* (HOEPA).

TILA, implemented by the Federal Reserve Board's Regulation Z, requires that borrowers be informed of loan costs, including the cost of credit insurance. Further, Regulation Z requires a written disclosure informing the borrower that "*the purchase of credit insurance is optional and not a condition of credit and will not be provided unless the borrower agrees to pay for the coverage.*" The borrower must indicate the election of coverage in writing. In addition, the 2002 amendments to HOEPA already have had the effect of significantly reducing the use of single-premium credit insurance on real estate secured lending.

If the underlying concern with respect to these products relates to the merits of single-premium credit insurance, we suggest that an alternative approach would be to prohibit single-premium credit insurance products in connection with residential mortgage loans. Earlier this year, the House of Representatives passed a bill, H.R. 1728, which included this type of language, and CUNA could support this approach as an alternative to the credit insurance language presently under consideration.

#### *Collection of Depositor Information*

As we stated in July, we believe that 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 CFPA.

We are concerned with the provisions of the proposed legislation that require the CFPA 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 CFPA 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.

#### *Treatment of State Law*

In order to achieve the regulatory simplicity that is a key objective for consumers and financial institutions alike under the new agency, there needs to be one rule of the road on consumer

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protection issues. We are well aware of the sensitivities of proposing federal preemption of state laws. However, if Congress creates a CFPB, 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 be unmanageable for institutions and incomprehensible for consumers.

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. We also believe that state concerns can be addressed through participation on the CFPB Oversight Board, as the legislation envisions.

Simply put: if the CFPB is sufficiently empowered to be a credible regulator ensuring nationwide consumer protection, why should any additional state rules be necessary? Conversely, if the proposed CFPB is not expected to be adequate to the task, why establish such a new agency in the first place?

*Closing*

On behalf of America's credit unions and their 92 million members, thank you very much for the opportunity to share our perspective on the CFPB legislation. As the Committee proceeds to mark-up, we look forward to working with you and would be happy to discuss these issues further.

Sincerely,

A handwritten signature in black ink that reads "Daniel A. Mica". The signature is written in a cursive, flowing style.

Daniel A. Mica  
President and CEO