



Credit Union National Association

cuna.org

BILL CHENEY
President & CEO

601 Pennsylvania Ave., NW | South Building, Suite 600 | Washington, DC 20004-2601 | **PHONE:** 202-508-6745 | **FAX:** 202-638-3389

July 12, 2012

The Honorable Timothy Johnson
Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, DC 20510

Dear Chairman Johnson:

On behalf of the Credit Union National (CUNA), I am writing regarding H.R. 4367, which passed the House of Representatives earlier this week by a vote of 371-0. CUNA is the largest credit union advocacy organization in the United States, representing nearly 90% of America's 7,200 state and federally chartered credit unions and their 95 million members. CUNA strongly supports this bipartisan legislation.

The Electronic Fund Transfer Act and its implementing rule, Regulation E (12 CFR 205.16), require ATM operators to provide two separate notices to consumers regarding the imposition of a fee for the use of the ATM. This fee is disclosed on the ATM, which must be affirmatively accepted by the user to proceed with their transaction. Regulation E also requires ATM operators to attach a physical placard to the ATM stating that a fee may be charged. If the placard is not attached, the statute prescribes that in a successful class action, plaintiffs are entitled to recover "the lesser of \$500,000 or 1 per centum of the net worth of the [ATM operator]", plus attorneys' fees and costs. This has led unscrupulous individuals to remove the physical placard and sue the ATM operator for noncompliance, costing financial institutions hundreds of thousands of dollars. The threat of lawsuits has caused many credit unions to go to extraordinary steps to document compliance, increasing the cost of operating ATMs to the detriment of credit unions' member-owners.

If enacted, H.R. 4367 would protect credit unions and other ATM operators from vexatious lawsuits while at the same time maintaining important consumer protections, by eliminating the requirement that a physical disclosure be placed on the ATM, and preserving the requirement that consumers are notified of potential fees associated with an ATM transaction through an electronic disclosure, and make an affirmative opt-in to accept such fee.

We understand that some consumer groups may have expressed concern that consumer disclosures may be reduced by this legislation; however, that is not the intention of the bill and we do not believe that would be the case. Credit unions strongly support appropriate disclosure of fees associated with the use of financial services. In our February 27, 2012, comment letter on the Consumer Financial Protection Bureau's interim final rule on Regulation E, we encouraged the Bureau to provide more flexibility on existing disclosure



PO Box 431 | Madison, WI 53701-0431 | 5710 Mineral Point Road | Madison, WI 53705-4454 | **PHONE:** 608-231-4000

The Honorable Timothy Johnson
July 12, 2012
Page Two

requirements, including additional options to provide disclosures that are currently required to be in writing to be delivered electronically, consistent with reducing compliance burdens. Nothing in this legislation would prohibit the Bureau from requiring an onscreen disclosure inclusive of or similar to the physical disclosure that is currently required by law. However, unless this legislation is enacted, credit unions will continue to be required to expend resources documenting compliance with a regulatory requirement that is outdated and unnecessary, and they will continue to be subject to lawsuits despite their efforts to comply.

H.R. 4367 is a bipartisan, commonsense piece of legislation, which has also been introduced in the Senate (S. 3204) and is cosponsored by 28 Senators. On behalf of America's credit unions and their 94 million members, we strongly support this legislation and hope the Senate will pass the bill as soon as possible. Thank you for your consideration.

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