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WRITTEN TESTIMONY
OF
BILL HAMPEL
SENIOR VICE PRESIDENT FOR RESEARCH AND ANALYSIS
AND
CHIEF ECONOMIST
CREDIT UNION NATIONAL ASSOCIATION
BEFORE THE COMMITTEE ON SMALL BUSINESS
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Chairwoman Velazquez, Ranking Member Graves, and Members of the Small Business Committee, thank you very much for the opportunity to testify at today's hearing on the "Impact of Financial Regulatory Restructuring on Small Businesses" on behalf of the Credit Union National Association (CUNA). My name is Bill Hampel, and I am Senior Vice President for Research and Analysis and Chief Economist at CUNA, the nation's largest credit union advocacy organization, representing over 90% of our nation's approximately 8,000 state and federal credit unions, their State credit union leagues, and their 92 million members.

The collapse of the financial system exposed flaws in the regulation of US financial institutions, and these flaws absolutely must be addressed. However, we believe these efforts should focus on protecting consumers, preserving their financial choices—including through dual chartering—ensuring the adequate provision of financial services to consumers and small businesses, and limiting the systemic risk that is currently posed by those institutions within the financial system which present disproportionate risk and have not been subject to sufficient regulatory oversight.

Most of the current crisis was caused by the actions of relatively unregulated financial institutions, and by compensation practices at even regulated institutions that encouraged excessive risk taking. Neither of these two factors exists at 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. As Congress moves forward, it is also important that Congress not "throw the baby out with the bathwater." Regulatory restructuring should not exclusively mean more regulation.

There needs be recognition that in certain areas—credit unions come to mind—the regulation and enforcement was sound and the regulated entities performed well, and an appreciation that smarter regulation is appropriate.

Credit unions have several concerns in the regulatory restructuring debate, including the preservation of the independent credit union regulator, the development of the Consumer Financial Protection Agency and the restoration of credit unions' ability to serve their business-owning members.

Independent Credit Union Regulator

First and foremost, it is critical that Congress retain an independent credit union regulator -- to further the interests of credit union member/owners, as distinct from bank customers. Credit unions' unique mission, governance structure, and ownership structure necessitate an independent federal regulator in order to ensure that the credit union model is not eroded as a result of the misapplication of bank regulations to credit union operations. Cooperatives really are different. They are subject to a completely different set of incentives that tend to create a much more member-friendly, risk-averse operation than a for-profit institution. Unlike banks, credit unions are not-for-profit institutions that exist to serve their member-owners rather than to profit from them. Also unlike banks, the members of the credit union own their institutions, which are subject to a democratic, one-member-one-vote system irrespective of members' account balances or any other factor.

The importance of an independent credit union regulator extends beyond philosophical and structural issues and is well illustrated by the historical posture that federal banking regulators have taken towards credit unions. A previous head of the Federal Deposit Insurance Corporation (FDIC) publicly called for taxation of credit unions, and the Office of Thrift Supervision, which has sometimes been short on institutions to regulate, has encouraged credit unions to convert to thrift charters. This should come as no surprise because those agencies' bank stakeholders view credit unions as their competition and spend a great deal of time, money, and effort lobbying against credit union interests, suing the National Credit Union Administration (NCUA), and using any other available means to try to put credit unions out of business.

Although there may be a strong logic for some consolidation among banking regulators, where competition among regulators for institutions to regulate can lead to lax regulation and supervision, that condition does not exist for credit unions. There is only one federal regulator for credit unions, and the general health of the credit union system in the current financial crisis proves that the current system works quite well. We encourage Congress to retain the National Credit Union Administration as the independent credit union regulator, and we are heartened that President Obama and House Financial Services Committee Chairman Frank have expressed support for NCUA.

Consumer Financial Protection Agency

Credit unions are also carefully following the development of legislation to create a Consumer Financial Protection Agency (CFPA). Consumers of financial products, especially 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.

Examination and Enforcement

Credit unions are extremely concerned that the legislation will result in an additional set of annual examinations they will have to pay for 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, 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. CPFA examiners could also examine regulated depository institutions on a random, backup basis.

Regulatory Consolidation and Modernization

The statutory mission of the CFPA must require that the agency streamline and modernize consumer protection regulation so as to minimize unnecessary regulatory burden. Duplicative and overlapping rules are draining the resources of many credit unions and must be eliminated.

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.

As Harvard University Professor Elizabeth Warren testified, "a single regulatory agency watching out for families and individuals can reduce the overall regulatory burden."[1] 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."[2] 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 loan interest rate ceiling, limitations on loan maturities, and stringent limitations on their investment options.

It is very important to credit unions that any regulations adopted by the CFPA have reasonable compliance effective dates and be amended in an orderly fashion so that regulations are not

[1] Testimony of Elizabeth Warren before the House Financial Services Committee. June 24, 2009. 5.
[2] Testimony of Michael Barr before the House Energy and Commerce Committee. July 8, 2009. 9.

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.

Preemption

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

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 protection issues. 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 be unmanageable for institutions and incomprehensible for consumers. 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 ensuring states retain authority over state safety and soundness issues and by giving states "a seat at the table," so that they have direct and continued input into the consumer protection 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 as giving a state representative a leadership role in any CFPA 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 CFPA and be assured they will have someone designated to consider their views.

We urge Congress to preempt state consumer protection law when establishing the CFPA, 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. If the CFPA is sufficiently empowered to be a credible regulator ensuring nationwide consumer protection, why should any additional state rules be necessary? Conversely, if the proposed CFPA is not expected to be adequate to the task, why establish such a new agency in the first place?

Restoration of Credit Unions' Ability to Serve Business Owning Members

As Congress considers regulatory restructuring legislation, we strongly urge the enactment of legislation that will restore credit unions' ability to serve the lending needs of their business-owning members.

Madame Chairwoman, the issue of credit union member business lending has been politicized by interest groups that benefit from artificial restrictions on credit union business lending authority, i.e., lenders who want the field all to themselves.

There is no economic or safety and soundness rationale to restricting credit union member business lending to 12.25% of a credit union's total assets. Before this restriction was enacted in 1998, credit unions faced no statutory restriction on business lending; and a report released by the U.S. Treasury Department after the restrictions were enacted found that business lending credit unions were more regulated than other financial institutions, and that delinquencies and charge-offs for credit union business loans were "much lower" than that for either banks or thrift institutions. That is still the case today. In the first half of 2009, the annualized net charge-off rate on business loans at credit unions was 0.36%. It was nearly six times greater, 2.13%, at banks. Simply put, the only reason there is a restriction on credit union business lending is because the banking lobby was able to leverage the restriction when credit unions sought legislation to permit them to continue serving their members.

The credit union business lending cap is overly restrictive and undermines public policy to support America's small businesses. It severely restricts the ability of credit unions to provide loans to small businesses at a time when small businesses are finding it increasingly difficult to obtain credit from other types of financial institutions, especially larger banks, and it also

discourages credit unions who would like to enter the business lending market. The cap effectively limits entry into the business lending arena on the part of small- and medium-sized credit unions—the vast majority of all credit unions—because the startup costs and requirements, including the need to hire and retain staff with business lending experience, exceed the ability of many credit unions with small portfolios to cover these costs.

We are under no illusion that credit unions can be the complete solution to the credit crunch that small businesses face. After all, nationally, credit union business lending represents just over one percent (1.06%) of the depository institution business lending market; and credit unions have about $33 billion in outstanding business loans, compared to $3.1 trillion for banking institutions. But we do think credit unions can – and should – be part of the solution.

Eliminating or expanding the limit on credit union member business lending would allow more credit unions to generate the portfolios needed to support compliance with NCUA's regulatory requirements, and would expand business lending access to many credit union members, thus helping local communities and the economy.

Indeed, there is, a significant economic reason to permit credit unions to lend without statutory restriction: America's small businesses need the access to credit. As the financial crisis has worsened, it has become more difficult for small businesses to get loans from banks, or maintain the lines of credit they have had with their bank for many years.

While we support raising member business loan limits, which will benefit small businesses as well as the economy, we also appreciate the need for strong regulatory oversight of member business lending. Indeed, increasing the limits on member business lending will not diminish credit unions' regulators authority to supervise such loans and the credit unions that provide them. We want to work with the regulator to facilitate underwriting practices and standards that will ensure safety and soundness remains a priority in member business lending.

A growing list of small business and public policy groups agree that now is the time to eliminate the statutory credit union business lending cap, including the Americans for Tax Reform, the Competitive Enterprise Institute, the Ford Motor Minority Dealer Association, the League of United Latin American Citizens, the Manufactured Housing Institute, the National Association of Mortgage Brokers, the National Cooperative Business Association, the National Cooperative

Grocers Association, the National Farmers Union, the National Small Business Association, the NCB Capital Impact, the National Association of Professional Insurance Agents, and the National Association of the Self Employed.

Representatives Paul Kanjorski (D-PA) and Ed Royce (R-CA) have introduced H.R. 3380, the Promoting Lending to America's Small Businesses Act, which would increase the credit union member business lending cap to 25% of total assets and revise the statutory floor on what constitutes an MBL from the current $50,000 to a more realistic level of $250,000. We estimate that credit unions could—safely and soundly—provide as much as $10 billion in new loans for small businesses within the first year of H.R. 3380's enactment. This is economic stimulus that would not cost the taxpayers a dime, and would not increase the size of government.

Madame Chairwoman, thank you very much for convening this hearing and inviting me to testify. I look forward to answering the Committee's questions.