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The Honorable Randy Neugebauer
Chairman
Subcommittee on Oversight and Investigations
Committee on Financial Services
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Neugebauer:

On behalf of the Credit Union National Association (CUNA), I am writing about your Subcommittee's upcoming hearing on "Who's In Your Wallet? Dodd-Frank's Impact on Families, Communities and Small Businesses." 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. We appreciate the opportunity to provide comments for this hearing.

As rules are proposed and finalized emanating from the Dodd-Frank Act, compliance burdens will continue to mount against smaller financial institutions such as credit unions. My comments will focus on several key areas related to the Dodd-Frank Act: exemption authority of the Consumer Financial Protection Bureau (CFPB), the remittances rule, qualified mortgage definition, and some general observations about the implementation of the Dodd-Frank Act.

CFPB Exemption Authority

When the CFPB was created, credit unions were assured it would level the playing field by subjecting unregulated entities engaging in abusive practices to the same regulation as credit unions and other highly regulated financial institutions. Congress should continue to remind the CFPB that it was these unregulated companies that were the bad actors in the marketplace and therefore should receive the most scrutiny.

Credit unions were not the cause of the financial and mortgage crisis that prompted Congress to enact legislative remedies to prevent such a calamity from happening again. However, the rules to fix the mortgage market and protect consumers do not solely impact the bad actors – they affect those that acted responsibly as well, such as credit unions. The repeated changes in rulemaking and final rules have a real dollar impact on consumers, especially at credit unions. A dollar spent on regulatory compliance is a dollar diverted from lending. So, in fact, some mortgage reforms in the Dodd-Frank Act do negatively impact access to mortgage credit for consumers.

CUNA believes that the CFPB has the authority to exempt certain entities under Section 1022(b)(3) of the Dodd-Frank Act from a number of regulations the agency is developing. Under this section, the Bureau, "by rule, may conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services, from any provision of this title, or from any rule issued under this title as necessary or appropriate to carry out the purposes and objectives of this title." CUNA has urged the CFPB to include an analysis of its exemption authority with every proposal and final rule so that every time the agency considers a new regulation, it will also consider whether institutions such as credit unions that are already heavily regulated should be exempted.

We are very concerned that the Bureau seems to be picking and choosing when to use statutory flexibility Congress provided to the CFPB in the Dodd-Frank Act. We believe the agency has more authority than it has been exercising, to extend relief to credit unions and others from certain compliance responsibilities. It is important that Congress aggressively urge the CFPB to utilize the exemption clause so that the weight of compounding regulations that are intended for abusers and the largest of financial institutions do not overburden credit unions and other smaller financial institutions.

Remittance Rule

Required by Section 1073 of the Dodd-Frank Act and effective in February 2013, this regulation imposes a series of new requirements on those entities making international remittance transfers. Basically, the regulation requires a “remittance transfer provider” that sends international wire or ACH transfers in the “normal course of business” for consumers to a recipient in a foreign country to comply with very detailed rules. Until now, few credit unions would have ever considered themselves to be “remittance transfer providers,” believing this term would cover companies such as Western Union or MoneyGram.

Under the final regulation, any credit union that provides this service to members will have to comply. At the same time the Bureau issued the final regulation (which was 116 pages of text and explanation in the Federal Register), it issued a proposal to define a key term, “normal course of business.” The agency proposed a definition that would say any credit union that makes 25 or fewer international remittances a year would not be considered a “remittance transfer provider.” Credit unions were surprised at the very low number proposed, which would only help a very, very small number of institutions.

If the Bureau adopts the meaningless 25 annual transfer level, many credit unions have said they will simply stop providing this service to their members because of the burden of complying with this new remittance regulation. Surely this is not what Congress intended.

CUNA originally urged a 2,400 annual transfer threshold for coverage, which was rejected as inconsistent with the statute. We are now asking that a credit union may make at least 1,000 transfers a year before being subject to this burdensome regulation, which we believe is reasonable.

We believe the rule should treat differently those remittance service providers that are in the business for the sole or primary purpose of providing remittance transfers as opposed to credit unions that provide these services as an accommodation to their members who trust them. A credit union can be very small and serve, for instance, an immigrant population who will want such a service. Time and again, the CFPB and members of Congress have acknowledged that credit unions do a good job providing services to their members, and it is a shame when a regulation imposes such a burden that a credit union has to either raise the fee for providing the service or discontinue the service altogether.

Qualified Mortgage (QM) definition

The CFPB has decided to delay until after the November elections the issuance of the Qualified Mortgage rule that will determine proper underwriting standards for borrowers. We wholeheartedly support this delay. CUNA generally supports the proposed definition of "qualified mortgage" and offers the following comments regarding specific provisions of the proposal.

"Safe Harbor" Alternative
CUNA strongly supports the proposed "safe harbor" alternative ("Alternative 1") which would treat "qualified mortgages as a legal safe harbor because the safe harbor approach would provide greater legal protection for credit unions than "Alternative 2" (a "presumption of compliance") with respect to the borrower's "defense to foreclosure" under TILA section 130(k), 15 U.S.C. §1640(k), against creditors that do not preform sufficient "ability to repay" analyses.

Additionally, CUNA believes that adoption of the safe harbor approach, by limiting the legal liability and exposure for prudent mortgage lenders such as credit unions, will limit the costs to consumers and provide greater choice in the marketplace for consumers.

Credit unions have historically engaged in safe and sound mortgage underwriting that includes a robust ability to repay analysis. Credit unions are concerned that, without a safe harbor, they could be faced with significant amounts of frivolous foreclosure defense litigation with respect to future foreclosures. A credit union making a qualified mortgage should be entitled to significant legal protections because it will have gone well beyond its statutory obligations under TILA to do an "ability-to-repay" analysis.

For these reasons, CUNA encourages the subcommittee to urge the CFPB to issue a final rule that structures QM as a strong legal safe harbor, not a rebuttable presumption.

Prepayment Penalties
CUNA does not support the proposal to include within the definition of "prepayment penalties" waived closing costs that can be recouped in the event of prepayment or certain amortized interest because it would discourage the very member-friendly practice of sometimes waiving some of the costs. In addition, the courts and agencies such as the National Credit Union Administration (NCUA) do not consider these items to be "prepayment penalties".

CUNA opposes including within the prepayment penalty definition fees, such as closing costs, that are waived unless the consumer prepays the loan because NCUA has determined that such arrangements are not "prepayment penalties."[1] Federal credit unions are currently not permitted to charge prepayment penalties pursuant to 12 U.S.C. § 1757(5)(A)(viii). Conflicting regulatory

[1] See, for example, "Prepayment Penalties – Loan Incentives," Letter of Richard S. Schulman, Associate General Counsel, NCUA, to David A. Jones, VP, Hartford Telephone FCU (June 13, 1996) ""When the FCU waives the closing costs, it confers a benefit on the borrower. If the borrower repays his loan within two years and must reimburse the FCU for closing costs, the borrower has simply lost the benefit.") available at http://www.ncua.gov/Legal/OpinionLetters/OL1996-0522.pdf.

definitions of "prepayment penalty" will lead to increased confusion by credit unions and consumers, and will increase credit union's regulatory burden.

CUNA also opposes the proposed treatment as a "prepayment penalty" of amortized interest occurring after prepayment (such as if a mortgage amortizes monthly on the first of the month and the borrower prepays in full on the 5th of the month, but the creditor continues to charge interest as though the loan were still outstanding until the end of the monthly amortization period). The courts have held that such computation methods are not "prepayment penalties"[2] and requiring credit unions that use this type of periodic amortization calculation to treat this method as a "prepayment penalty" for disclosure purposes would be confusing to consumers and would impose significant regulatory burdens on credit unions while providing limited benefits to consumers.

Lower Documentation "Qualified Mortgages"
Some credit unions serve significant numbers of self-employed people and/or immigrant populations who may not have documents such as W-2 forms, pay stubs, and so forth. In
order to ensure continued access to mortgage credit for these groups, CUNA has requested the CFPB clarify that "qualified mortgages" can be underwritten based primarily or exclusively on financial institution records so long as those records show ability to repay.

"Balloon Payment Qualified Mortgages" for Lenders in Rural and Underserved Areas:

CUNA supports the proposal to allow balloon payment mortgages to be considered "qualified mortgages" if made by lenders under $2 billion in assets that operate predominantly in "underserved" and "rural" areas. This is necessary for maintaining consumer access to mortgage credit in these areas because it allows smaller institutions to control interest rate risk.

CUNA supports the proposed $2 billion asset limitation and believes that no additional limitations regarding the creditor's total annual number of mortgages made or total dollar annual value of mortgage transactions are needed given the asset size limitation and the other proposed limitations in the rule.

CUNA does not support, however, the Bureau's proposed definitions of "underserved" and "rural" because these proposed definitions are far too narrow to be meaningful in practice. We believe that the proposed definitions of "underserved" (i.e. counties where only one creditor makes five or more mortgages a year) and "rural" (i.e. only counties that are not within or adjacent to a metropolitan statistical area or a micropolitan statistical area) are far too restrictive and should be expanded to include areas determined to be "underserved" or "rural" by other federal agencies such as the National Credit Union Administration (NCUA) Board.

In our view, limiting the definitions of "underserved" and "rural" to only the most underserved and the most rural counties will have the effect of limiting access to mortgage credit in other

[2] In *Goldman v. First Federal Sav. & Loan Ass'n,* 518 F.2d 1247 (7th Cir. 1975), Judge (and later Supreme Court Justice) John Paul Stevens' majority opinion specifically held that prepaid unearned interest retained by a federal thrift after the borrowers prepaid their loan was not a "prepayment penalty" within the meaning of the Federal Home loan Bank Board regulations. See id. At 1249-54.

objectively underserved and rural areas in a manner inconsistent with Congressional intent. Some counties are objectively underserved even when two or more financial institutions each originate 5 or more mortgages a year and many rural areas are in counties adjacent to or included within a micropolitan statistical area or a metropolitan statistical area.

Delayed Compliance Date

CUNA has urged the Bureau to set a compliance date that recognizes creditors' need for additional time to implement these requirements. Credit unions and other creditors are faced with myriad new regulatory compliance requirements they are trying to meet that also will affect their compliance efforts with this rule. Additional time will be especially important for credit unions and others that rely on third parties, such as software vendors. These third parties will need time to incorporate the necessary updates, complete the necessary testing, and then include this change into their regularly scheduled releases.

General Comments

Credit unions are not-for-profit financial cooperatives, owned solely by 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 regulations impacts its members directly. Every dollar that a credit union spends complying with an unnecessary or overly burdensome regulation is a dollar that cannot be used for the benefit of its member-owners.

Credit unions are among the most highly regulated financial institutions in the United States, and their regulatory burdens continue to multiply with little or no apparent regard for the costs of each requirement or, more important, the cumulative impact on the institutions that must comply. These concerns are compounded by the range of upcoming regulations credit unions will face under the Dodd-Frank Act. Combined with existing regulatory burdens, the increasing regulatory requirements pursuant to the Dodd-Frank Act and other government initiatives are among the major drivers of credit union consolidation.

Some have called this a "crisis of creeping complexity" because it is not any one particular regulation which makes the ability of smaller credit unions to serve their members difficult, instead it is the steady accumulation of regulatory requirements that can strain a credit union to its breaking point. Credit unions are concerned that these creeping regulatory burdens not only take up an increasing share of credit union employee and volunteer time—often necessitating mergers with larger credit unions—but also stifle innovation in credit union financial services.

Congress should continue its prudent oversight of regulatory agencies as they continue to propose and finalize rules coming out of the Dodd-Frank Act and keep a keen eye on the cost of compliance and growing regulatory burden for smaller financial institutions, such as credit unions, that were not a party to the financial crisis. We served our members through the financial crisis and continue to do so in its aftermath.

Thank you for holding this hearing and receiving our view on this important topic.

Best regards,

Bill Cheney
President & CEO