CUNA
Credit Union National Association

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The Honorable Shelley Moore Capito
Chairman
Subcommittee on Financial Institutions
and Consumer Credit
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Gregory Meeks
Ranking Member
Subcommittee on Financial Institutions
and Consumer Credit
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Dear Chairman Capito and Ranking Member Meeks:

On behalf of the Credit Union National Association (CUNA), I am writing regarding tomorrow's hearing on legislative proposals to reform the Consumer Financial Protection Bureau (CFPB). CUNA is the largest credit union advocacy organization in the United States, and the only credit union organization that represents the views of America's state and federally chartered credit unions. Partnering with our state credit union leagues, CUNA represents America's credit unions and their 97 million members. We appreciate the opportunity to submit our views on some of the legislation subject to tomorrow's hearing.

Legislation Related to the Structure of the Bureau of Consumer Financial Protection

Representatives Duffy and Bachus have introduced legislation (H.R. 2402 / H.R. 2446) to replace the Director of the CFPB and establish a five person commission. When the CFPB was initially proposed by the Administration in June 2009, the legislation provided for a five person board to govern what was then called the Consumer Financial Protection Agency (CFPA). The administration's proposal further designated that one of the five seats would be designated for a national banking regulator. In response to that proposal, CUNA stated that the:

> CFPA 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.[1]

Our concern here was that, under the Administration's proposal, there was no guarantee that the CFPA Board would include someone who had experience running a financial

[1] CUNA Letter to House Financial Services Committee Chairman Barney Frank. July 14, 2009. 5. http://www.cuna.org/Grassroots-And-Political-Action/DownLoads/congress_letter_071409/

institution, specifically a credit union, and that without such experience, there would not be an appreciation for the totality of regulatory burdens facing credit unions. If Congress decides to replace the CFPB Director with a Commission, we would encourage Congress to expand the size of the Commission beyond what has been proposed by the Duffy and Bachus bills and to include appropriate industry and regulator representation, including a seat specifically for a person with experience related to credit unions. Expanding the scope of experience in this manner would enhance the quality of regulations promulgated by the CFPB by ensuring both the consumer perspective as well as the industry perspective is represented in the decision-making process.

Legislation Related to the Powers of the Financial Stability Oversight Council

We understand that Representative Duffy may reintroduce legislation that he sponsored in the 112th Congress to authorize the Financial Stability Oversight Council (FSOC) to stay or set aside any regulation of the CFPB upon a determination by a majority of its members that the regulation is inconsistent with safe and sound operations of financial institutions, and to require the CFPB to take into consideration the impact of its rules on insured depository institutions.

CUNA supports this legislation. The current threshold to prevent harmful regulation from going into effect is a two-thirds vote of the financial regulators; we believe this is too high given the importance of maintaining a safe and sound financial system. Reducing the threshold would help balance consumer protection with safety and soundness concerns.

In addition, we encourage Congress to consider legislation to expand the conditions that must be met in order for the FSOC to override a regulation if the FSOC determines a new rule would be unreasonably burdensome for financial institutions; or if the FSOC determines that the burden to financial institutions outweighs the benefit to consumers.

Legislation Related to the Use of Consumer Information

Representative Duffy has introduced legislation (H.R. 2571) to prohibit the CFPB from requesting, accessing, collecting, using, retaining or disclosing nonpublic personal information about a consumer unless it has clearly disclosed to the consumer what information will be requested, access, collected, used, retained or disclosed, and the consumer has indicated that the information may be requested, accessed, collected, used, retained or disclosed. The legislation would also eliminate the CFPB's exemption from the Right to Consumer Privacy Act of 1978. CUNA supports this legislation. Consumers should have knowledge of their personal information being transmitted to or acquired by the CFPB.

Representative Westmoreland has introduced legislation (H.R. 3183) that would require the CFPB to provide at a consumer's request one free annual report disclosing all of the information about the consumer held by the CFPB, the sources of that information and the identity of any person or agency to which the CFPB has disclosed such information. H.R. 3183 would provide an important consumer protection by allowing consumers to know what information the Bureau has about them and how the Bureau may be using it. CUNA supports this legislation.

Indexing Dodd-Frank Thresholds for Inflation

In addition to the reforms contemplated by the legislation under consideration at this hearing, we encourage Congress to consider indexing various thresholds in the Dodd-Frank for inflation. The Dodd-Frank Act exempts credit unions and community banks with $10 billion or less in total assets from examination by the CFPB; examination for compliance with consumer protection laws for these institutions would be conducted by the federal prudential regulator which is the National Credit Union Administration, in the case of credit unions. Indexing this threshold (and its companion threshold in Section 1025) for inflation is critical to the intent of Congress in providing the exemption because without indexing these thresholds, significant erosion of the exemptions will occur in a relatively short amount of time. For example, if inflation were 3% per year, the initial $10 billion level would fall to the equivalent of $8 billion after just over 7 years. In addition to the thresholds under Section 1025 and 1026, the Committee should consider adjusting all similar thresholds in other areas of the legislation, including Section 1075 related to debit interchange regulation.

Compliance with Upcoming Mortgage Rules' Effective Dates

In January 2014, seven detailed and cumbersome mortgage rules will take effect for mortgage lending credit unions and others covered by the regulations. With the compliance deadlines looming, a number of our members have turned to us in desperation because they have indicated they are simply overwhelmed by the multitude and scope of the changes.

Many credit unions rely on third parties and vendors to provide forms, software, programming, training, and numerous other services that will allow credit unions to meet their compliance responsibilities. Based on numerous discussions with our members, it appears that many of their vendors will not be able to make the range of changes necessary to support full compliance in January.

In light of our members' concerns, we have raised this matter with Congress and the CFPB on several occasions. The CFPB has indicated that it is talking with prudential regulators about delaying the citation of institutions for noncompliance for several months after January.

Despite the CFPB's efforts to mitigate examination issues and to make certain changes in the rules, we feel the time has come for this Subcommittee to coordinate with the CFPB to either provide additional time for compliance for consumer and community based institutions, such as credit unions, or to extend the effective date for legal liability under these rules, or both.

Our approach, to allow certain institutions such as credit unions and community banks that did not contribute to the financial crisis and are already heavily burdened with regulations to have an additional few months, until July 2014, to comply and be subject to legal liability, is reasonable and would facilitate more complete compliance with the rules. In essence, our approach separates the mandatory compliance date from the effective date for certain institutions, such as credit unions. It would not mean changing the January effective dates set by the CFPB, which would remain in place but compliance for credit unions and community banks only would be delayed.

There is precedent for establishing a mandatory compliance date that is later than an effective date. For example, when the Federal Reserve Board implemented Regulation Z, Truth-in-Lending, it utilized an April-October cycle, under which rules took effect in April but compliance was not required until October of that same year.

The consequences of ignoring legitimate concerns about compliance with the mortgages rules may include subjecting consumer and community based institutions to needless risk of litigation and legal action if compliance with the January dates is not possible. Additionally, due to the potential litigation and legal actions that could ensue, some consumer and community based institutions have indicated they may cease providing mortgage credit products to consumers until full compliance can be achieved, which may further disrupt credit availability to consumers in the marketplace.

To facilitate compliance, we would support provisions that allow the CFPB to set benchmarks toward July compliance and that would shield those institutions that are afforded additional time from litigation and legal action until compliance is actually required. We urge the Subcommittee to work with the CFPB in an expeditious manner to allow more time for certain institutions to comply with the mortgage rules.

On a related issue, we are very concerned that the qualified mortgage (QM) under the Ability-to- Repay rule may indeed result in disparate impact, given the 43% debt to income ratio requirement. While the CFPB was careful not to require institutions to issue any or only QM's, already our members are telling us that examiners say they will expect credit unions to provide justification when a non-QM is issued. There are also concerns that the secondary market will focus on QMs. The statement issued recently on this subject by the regulators was well-intended but will not protect institutions in court if they are challenged on this issue. We urge the Subcommittee to look into this with the agencies and shield institutions that act in accordance with the rule from disparate impact allegations and litigation.

Exemptions for Credit Unions

It is a tragic irony of the Dodd-Frank Act that institutions such as credit unions, which have contributed to the economic recovery and not to the financial crisis, are overburdened by rules necessitated by institutions that caused the crisis. Regulatory requirements and compliance obligations, particularly those of the magnitude of the mortgage rules, impose heavy costs. In the case of credit unions, those costs must be borne by the members through higher fees or foregone services. It is simply unfair, unwarranted, and superfluous to impose rules intended for abusers in the financial marketplace on credit unions.

Under current law, the CFPB has authority to exempt any class of covered entities or products from its rules.[2] The CFPB has made a number of changes in its rules to address concerns that credit unions have raised but the Bureau has not been willing to execute more meaningful exemptions to which credit unions should be entitled given their overall record of member service and consumer protection. It is certainly within the CFPB's authority to exempt entities with a history of consumer-friendly activity from new regulations that would otherwise serve to make the service more expensive for the credit union and its members, or to reduce the availability of service. We urge the Subcommittee to review the issue of exemptions for all community and consumer based institutions and coordinate with the CFPB, including through oversight, to achieve greater use of the agency's exemption authority.

Conclusion

Credit unions remain among the most highly regulated entities in the financial services sector. While the CFPB has taken several steps to solicit feedback regarding the impact of its regulations on credit unions, the fact remains that regulatory burden has continued to increase in the two years since the Bureau stood up. To make matters worse, one needs to look no further than the remittance rule and the mortgage rules to understand that there is little hope for this trend to change. Credit unions continue to face a crisis of creeping complexity with respect to regulatory burden and they look to Congress for

[2] Section 1022(b)(3)

assistance. Congress has an important role to play in ensuring that the CFPB's rules do not adversely affect credit unions and their members by impeding or increasing the cost of providing the high quality member service that credit union members expect and deserve. It is appropriate to consider these structural reforms and we look forward to working with you in this regard.

On behalf of America's credit unions and their 97 million members, thank you for your consideration of our views.

Best regards,

Bill Cheney
President & CEO