CUNA
Credit Union National Association
601 Pennsylvania Ave., NW | South Building, Suite 600 | Washington, DC 20004-2601 | PHONE: 202-638-5777 | FAX: 202-638-7734
cuna.org

TESTIMONY
OF
DOUGLAS A. FECHER
PRESIDENT AND CHIEF EXECUTIVE OFFICER
WRIGHT-PATT CREDIT UNION
ON BEHALF OF THE
CREDIT UNION NATIONAL ASSOCIATION

BEFORE THE
SUBCOMMITTEE ON TARP, FINANCIAL SERVICES AND BAILOUTS OF PUBLIC AND PRIVATE PROGRAMS
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

HEARING
ON
"CREDIT CRUNCH: IS THE CFPB RESTRICTING ACCESS TO CREDIT?"
July 24, 2012

Testimony of
Douglas A. Fecher
President and Chief Executive Officer
Wright-Patt Credit Union
On behalf of the
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Before the
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Chairman McHenry, Ranking Member Quigley, Members of the Subcommittee:

Credit unions greatly appreciate the opportunity to testify before the subcommittee about effects the Consumer Financial Protection Bureau's (the Bureau) regulations could have on the accessibility of credit for credit union members. My name is Doug Fecher, and I am President and Chief Executive Officer of Wright-Patt Credit Union, a federally insured, state chartered credit union serving over 225,000 members, with total assets of $2.5 billion, headquartered in Fairborn, Ohio. I am testifying today on behalf of the Credit Union National Association, 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.

Credit unions face a crisis of creeping complexity with respect to regulatory burden. It is not just one new law or revised regulation that challenges credit unions, but the cumulative effect of all regulatory changes. The frequency with which new and revised regulations have been promulgated in recent years and the complexity of these requirements is staggering. Since 2008, we estimate that credit unions have been subjected to in excess of 120 regulatory changes from at least 15 different federal agencies. The burden of complying with ever-changing and ever-increasing regulatory requirements is particularly onerous for smaller institutions, including credit unions. This is because most of the costs of compliance do not vary by size, and therefore proportionately are a much greater burden for smaller as opposed to larger institutions. If a smaller credit union offers a service, it has to be concerned about complying with virtually all of the same rules as a larger institution, but can spread those costs over a much smaller volume of business. Further, even though most credit union board members are unpaid volunteers, they face the same legal liabilities regarding compliance as do compensated bank directors.

Today there are nearly 1,000 credit unions operating in the U.S. with one or fewer full-time equivalent employees. Nearly one-half of the nation's 7,200 credit unions operate with just five or fewer full-time equivalent employees. Anecdotally, many of these folks tell us they put in 70- and 80-hours a week trying to keep up with regulations and the constant barrage of regulatory changes. Not surprisingly, smaller credit unions consistently say that their number one concern is regulatory burden. Difficulties in maintaining high levels of member service in the face of increasing regulatory burden are undoubtedly a key reason that roughly 300 small credit unions merge into larger credit unions each year.

Every dollar a credit union spends complying with these changes is a dollar that is not spent to the benefit of credit union members. Because credit unions are member-owned financial cooperatives, the entire cost of compliance is ultimately borne by credit union members. Greater compliance costs reduce net income, which is credit unions' only source of net worth. While increased compliance costs will not drive credit unions into immediate insolvency, it will reduce, on the margin, the protective cushion provided by capital, leaving credit unions less resilient during the next big financial shock.

The Bureau is required by the Dodd-Frank Act to review all the statutes and regulations under its jurisdiction. Because of this review, there may be hundreds of additional changes that credit unions will be required to make. This is why credit unions have a significant amount of anxiety with respect to the potential impact the Bureau will have on their ability to serve and lend to their members. In addition, there is significant amount of frustration within the credit union system with respect to further rules from the Bureau because credit unions did not cause the financial crisis; they did not seek or receive any taxpayer bailout; and they did not engage in the type of activity that prompted the creation of the Bureau. With every regulatory change, many feel as if they are being required to pay for the sins of other financial actors. Credit unions simply want to go about the business of serving their members; but unless the Bureau uses the tools at their disposal to minimize or eliminate the impact of its regulation on them, the adverse impact will be felt by the member-owners of credit unions.

For the purposes of this testimony, I would like to discuss the tools that the Bureau has at its disposal to minimize and eliminate the impact of its regulation on credit unions, as well as the impact of regulatory changes presently under consideration by the Bureau, specifically: the integration of Real Estate Settlement Procedure Act (RESPA) and Truth in Lending Act (TILA) Disclosures; remittance regulation; and the definition of a Qualified Mortgage.

Exemption Authority

When considering the impact of the Bureau's rules on credit unions' ability to lend to and serve their members, it is important to keep in mind that the answer to the question should be, "no impact," if the Bureau actively uses the tools that Congress gave it to address regulatory burden. Congress has directed the Bureau to identify and address outdated, unnecessary and unduly burdensome regulations in order to reduce unwarranted regulatory burden. (Section 1021(b)(3)). Further, Congress conveyed to the Bureau the ability to exempt any class of provider from its rulemaking. (Section 1022(b)(3)). The intent here is to ensure that covered entities, such as credit unions, are not under regulation that impedes service to their members or customers, and to ensure that entities that treat consumers well operate in a regulatory environment that allows them to continue to do so.

We believe the Bureau has more authority than it has been exercising to extend relief to credit unions and others from certain compliance responsibilities. We are very concerned that the Bureau seems to be picking and choosing when to use the statutory flexibility Congress provided to the Bureau in the Dodd-Frank Act. It is important that Congress aggressively urge the Bureau 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. The Bureau's failure to use this authority as Congress intended may ultimately drive good actors out of markets, forcing consumers to do business with those entities that remain. We encourage Congress to urge that the Bureau exercise its authority as broadly as possible to protect credit unions from burdensome overregulation, which ultimately impacts consumers. Further, CUNA has urged the Bureau to include an analysis of its exemption authority with every proposal and final rule so that every time the Bureau considers a new regulation, it will also consider whether institutions such as credit unions that are already heavily regulated should be exempted. The default should be exclusion unless demonstrated need.

<u>Integration of RESPA and TILA Disclosures</u>

CUNA supports providing consumer disclosures that are meaningful and clear for borrowers to understand the important terms of a financial transaction. When the Dodd-Frank Act was being considered by Congress, CUNA strongly supported combining certain RESPA TILA forms to improve efficiencies in disclosures and minimize disclosure burdens on credit unions as well as on consumers, who are overloaded with financial information that is not practical or useful. During the development of the proposed integrated forms, the Bureau reached out to CUNA on numerous occasions to solicit information on credit unions' views and concerns.

However, we are very concerned about key aspects of the 1,099 page RESPA/TILA proposed regulation that was released on July 9, 2012, and this is a perfect example of the enormous burden that credit unions and other smaller financial institutions face. The proposal is massive, and reviewing of the document will prove to be problematic for some stakeholders who do not have the luxury of large staffs and teams of lawyers they can devote to working through the proposal, while also trying to comply with other Bureau issues that are pending. Due to the various mandates Congress required the Bureau to implement, we are concerned that just being able to respond to all the important issues raised in the proposal will be burdensome, particularly in light of other proposals that are pending or developing from the Bureau to meet statutory requirements.

Finance Charge

One aspect of the new RESPA/TILA proposal would be to expand the definition of the finance charge as defined under Regulation Z. As the Bureau has acknowledged, absent further action by the bureau, a more-inclusive finance charge as proposed would have the following effects:

- Cause more closed-end loans to trigger HOEPA protections for high-cost loans;

- Cause more loans to trigger requirements to maintain escrow accounts for first-lien higher-priced mortgage loans;
- Cause more loans to trigger requirements to obtain one or more interior appraisals for “higher-risk” mortgage loans;
- Reduce the number of loans that would otherwise be “qualified mortgages” under the ability-to-repay requirements, given that qualified mortgages cannot have points and fees in excess of 3% of the loan amount.

Comments are due to the Bureau on the finance charge definition by September 7, 2012, and CUNA will be focusing on the substance and impact of the proposed expansion of the finance charge definition. While the current system for determining what is a finance charge and what is not is certainly confusing, we hope to work with the Bureau to address this issue without triggering so many other unintended consequences.

Effective Dates

The Bureau is proposing to delay the compliance deadline of certain requirements relating to new disclosures required under the Dodd-Frank Act and is seeking comments on this approach. While Congress is responsible for creating these requirements, it has given the Bureau authority to mitigate compliance burdens and we appreciate the Bureau’s willingness to consider how best to use that authority as it relates to these disclosures.

Congress did not specify a specific compliance deadline for this regulation and the Bureau is presently considering a compliance deadline for the RESPA/TILA proposal. We hope the Subcommittee will encourage the Bureau to give credit unions as much time as possible to comply with a final rule.

Model Forms vs. Standard Forms

TILA authorizes the Bureau to publish model forms for the TILA disclosures. In contrast, RESPA authorizes the Bureau to require the use of standard forms. Model forms benefit lenders by providing them with safe harbors for complying with disclosure obligations, while preserving flexibility for lenders to vary from the model so long as they adhere to the regulation. Standard forms allow less flexibility for lenders, but provide consistency for both consumers and lenders.

We have urged the Bureau to issue a rule that would require the use of standard forms under RESPA for the Loan Estimate and Settlement Disclosure for mortgage loan transactions that are subject to RESPA, but would allow lenders to use model forms for the TILA disclosures. We believe that such an approach would yield less opportunity for unscrupulous lenders to present "bait and switch" scenarios to consumers, and that this approach would contribute overall to better consumer protection. Again, recognizing that the RESPA/TILA form combination is required by the Dodd-Frank Act, we continue to urge the Bureau to provide consumers with disclosures that are complete yet efficient for both the consumer as well as the lender. Not only is the prospect of too many disclosures daunting to and unwelcomed by most consumers, the cost to generate, deliver and explain the disclosures to consumers has become extremely burdensome to lenders.

Potential Costs of Compliance

Assigning a dollar figure to the cost of compliance for these regulatory changes is extremely difficult. When a regulation is changed, there are certain upfront costs that must be incurred: staff time and credit union resources must be applied in determining what is necessary in order to comply with the change; forms and disclosures must be changed; data processing systems must be reprogrammed; and staff must be retrained. It also takes time to discuss these changes with credit union members, and at times, members get frustrated because of the change. The ongoing costs of doing business in a manner that complies with the new regulation, compared to how it was conducted previously, is more challenging to measure.

CUNA encourages the subcommittee to closely monitor the rules that the Bureau has under consideration, including the proposals relating to the RESPA/TILA rulemaking.

Consider Repeal of Specific Disclosure Requirements

With respect to disclosures specifically mandated by the Dodd-Frank Act, we recognize that Section 1419 amends TILA to require, in the case of residential mortgage loans, "the disclosure of the total amount of interest that the consumer will pay over the life of the loan as a percentage of the principal of the loan," ("Total Interest Percentage"). The extent to which this disclosure would actually help consumers has not been documented and we encourage Congress to repeal this requirement or make it more meaningful to consumers by clearly distinguishing it from the annual percentage rate. We are concerned that there is tremendous potential for consumer confusion with this disclosure, particularly if it is not distinguished from the APR.

In this same light, Section 1419 also amends TILA to require the disclosure of the "approximate amount of the wholesale rate of funds in connection with the loan," in the case of residential mortgage loans. For those credit unions that intend to sell mortgage originations to the secondary market, this disclosure provides absolutely no benefit or value to the consumer. Secondly, for those credit unions that intend to portfolio their mortgage originations, CUNA believes that a more appropriate measure of the cost of funds in this context would be the credit union's cost of funds as estimated over the life of the loan, rather than solely at the point of origination.

Settlement Disclosure Delivery Timing

CUNA is also concerned with a proposal being considered by the Bureau which would require delivery of an integrated Settlement Disclosure three business days before closing in all circumstances. We have urged the Bureau to not proceed with such a requirement. It is difficult, at best, for credit union lenders to coordinate with title companies and others 24 hours in advance of a real estate closing, much less 72 hours. To increase the period to three days prior to closing would be very problematic for credit unions, and likely very frustrating for consumers who usually want to close on their home loan as soon as possible. CUNA encourages the subcommittee to help ensure additional regulatory burden regarding this requirement is not placed on credit unions in any future rulemaking.

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.

Let me give you some idea of how Wright-Patt will be required to comply. We are a large credit union, but only originate approximately 25 international wire transfers a month. Our core processing system does not support the Remittance Transfer Rule Changes. We would need to implement new software to process international wires allowing for the exchange rate, fees, and receipt requirements. Additionally we would need to put into place the specific error resolution processes required by the regulation and conduct staff training.

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 this low threshold, 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 by the Bureau 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 Bureau 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 Bureau 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. After all, credit unions have historically kept in their own portfolio the vast majority of the mortgage loans they originate. 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 Bureau 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." Federal credit unions are currently not permitted to charge prepayment penalties pursuant to 12 U.S.C. § 1757(5)(A)(viii). Conflicting regulatory 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" 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 Bureau 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 Board’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 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.

Conclusion

This statement reflects just a small portion of the regulatory burden that credit unions are beginning to face because of statutory provisions in the Dodd-Frank Act. As the Bureau continues to review the many rules and regulations that are now under its purview, credit unions are bracing for the almost insurmountable task of deciphering the barrage of information that will be thrust upon them. To help put the burden of compliance into perspective, in order to meet statutory deadlines the Bureau is expected to propose and finalize at least five additional rules and regulations relating to mortgage lending in the next six months that will directly impact credit unions. This is outside of, and in addition to, the two proposed rules issued just a few weeks ago that together amounted to almost 1,400 pages, which includes enumerable proposed operational and disclosure requirements that will significantly alter mortgage lending functions, services and costs for all lenders. Moreover, under the Dodd-Frank Act, the Bureau is required to develop at least six other rules, in addition to the seven mentioned above, just in the area of lending-related issues.

Battered by the volume of regulatory issues and concerns since the beginning of the financial crisis, credit unions are bracing for the next wave of rules that flow from the Dodd-Frank Act. Congressional oversight must begin early in the rulemaking process so that Congress will remain informed of the scope, need and implementation cost of proposed regulations that will affect all financial institutions. Credit unions, like many smaller financial institutions, are disproportionally affected by the burden of compliance compared to their larger counterparts that may operate in a multi-state or national capacity.

We will continue to strongly urge the Bureau to consider using its statutory authority to exempt credit unions so that regulatory burden can be reduced to a more manageable level. The oversight authority of this Committee will prove important in reminding the Bureau of its statutory ability to exempt credit unions.

On behalf of America's credit unions and their 95 million members, thank you very much of the opportunity to testify at today's hearing. I am pleased to answer any questions that you may have.