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

The Honorable Wm. Lacy Clay  
Ranking Member  
Subcommittee on Financial Institutions and  
Consumer Credit  
Committee on Financial Services  
United States House of Representatives  
Washington, DC 20515

Dear Chairman Luetkemeyer and Ranking Member Clay:

On behalf of America's credit unions, I am writing regarding the hearing titled "Improving Transparency and Accountability at the Bureau of Consumer Financial Protection." The Credit Union National Association (CUNA) represents America's credit unions and their 110 million members.

Credit unions are the original consumer financial protectors. Because of their not-for-profit, cooperative ownership structure, credit unions do not face the same market pressures and they do not have the same structural motives as for-profit financial services providers. This distinction, combined with decades of providing consumer friendly financial services, is the key reason that consumer protection regulation should be tailored so that it is not overly burdensome on credit unions.

Unfortunately, the Bureau, in its first several years of existence, missed opportunities to leverage credit unions' mission and history to the benefit of consumers, and finalized regulations that harmed credit unions and their members. Consumers lose when one-size-fits-all rules force credit unions to pull back safe and affordable options from the market, pushing consumers into the arms of the providers engaged in the very activity that the rules were designed to curtail. Under its new leadership, the Bureau has the responsibility to examine all aspects of its activity to ensure it is fulfilling its mission without impeding the delivery of safe and affordable financial services. We applaud the process the Bureau is undertaking.

We urge the Bureau to look closely at the impact that its rules have had on credit unions and their members and to streamline regulations to reduce burden or exempt credit unions entirely, as appropriate: the Bureau's rules should focus on Wall Street banks and the unregulated and under-regulated sectors of the financial services industry. If the Bureau spent less time regulating and supervising credit unions, it could spend more time on the abusers of consumers, which is why the Bureau should work more closely with the National Credit Union Administration (NCUA) to ensure credit union compliance with pertinent regulations and transfer supervision of the largest credit unions back to NCUA.

Throughout its history, the Bureau has invited feedback from stakeholders on its rulemakings but there has been little evidence in final rules that the Bureau has heard and responded to the concerns; this should change and we make several recommendations related to the Credit Union Advisory Council (CUAC) and other feedback mechanisms.

We also hope the Bureau will make significant changes to the consumer complaint database to ensure that the complaint intake process is effective and fair. And, as the Bureau takes steps to address the rules that have been promulgated in recent years, it is important that it take steps to reduce regulatory burden while at the same time recognizing the cost to credit unions and consumers of any change in regulation.

As the Bureau moves forward with new rulemakings, we encourage it to make use of the Advance Notice of Proposed Rulemaking (ANPR) process to solicit additional stakeholder views, and work with the Small Business Administration (SBA) to ensure that the Small Business Regulatory Enforcement Fairness Act (SBREFA) process is efficient and effective. Once rules are finalized, the guidance provided by the Bureau must be accurate, easy to understand, and timely; and, enforcement must be fair.

Credit unions and the Bureau share a common mission related to financial health. By leveraging credit unions' expertise in financial education rather than implementing additional rulemaking to guide certain consumer choices, the Bureau could provide a strong foundation for good consumer health. Credit unions are ready to be partners with the Bureau in this regard.

### **Credit Unions Want Change at the Bureau**

CUNA has received feedback for years from credit unions about the Bureau's regulatory burden and its effect on their members. In a recent survey conducted in March by CUNA, credit unions provided extensive feedback on how regulatory burden is negatively impacting their operations.<sup>1</sup>

The survey showed the following:

- Nearly 75% of reporting credit unions “strongly agree” that the Bureau’s rulemaking processes and procedures should be improved, and that there are aspects of the Bureau’s engagement with credit unions and other credit union industry stakeholders that should be improved.
- Of the rulemaking changes examined, survey respondents found the following to be the most important, with not less than 73% and as many as 89% of credit union survey respondents indicating it is “very important” that a change be made with respect to each of these five processes and procedures:
  - More carve-outs and exemptions for credit unions;
  - Better guidance and tools for implementing rules;
  - More focus on the impact on small credit unions through the SBREFA Process;
  - More time implementing rules; and
  - More cost-benefit research and analysis to inform the rules.

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<sup>1</sup> CUNA conducted a survey entitled, “2018 CFPB Improvements (Request for Information) Survey” in March 2018; 272 credit union professionals completed the study, which was administered by CUNA’s Market Intelligence unit. The purpose of the study was to: (1) measure credit unions’ perceptions of the rulemaking activities, policies, and procedures that have been undertaken by the Bureau over time, and (2) give the Bureau feedback and suggestions on ways to improve outcomes for credit unions and the consumers that they serve.

- Credit unions were asked to indicate how important it is to them that the Bureau revisit and change a list of already-established rules, taking into consideration the investment of resources the credit union has already incurred to implement the rule. Survey respondents were most adamant that the following rules be changed:
  - TILA/RESPA requirements;
  - Mortgage origination rules; and
  - Qualified mortgage requirements.
- When it comes to the Bureau supporting credit unions' ability to innovate, at least 90% of credit union survey respondents "strongly" or "somewhat agree" that the Bureau should:
  - Do more to support credit union innovation;
  - Increase financial literacy and education collaboration; and
  - Better define what is considered an unfair, deceptive, or abusive act or practice (UDAAP) to improve credit unions' ability to innovate.
- Among the steps the Bureau could take to encourage and support innovation:
  - Nearly 90% of credit union survey respondents believe (1) less complex rules and (2) more flexibility in areas where there is no pattern of consumer abuse are very important.
  - About 75% indicate that (1) fewer rules; (2) policy that aligns better with NCUA requirements; (3) more research and analysis before proposing a rule; and (4) more narrowly tailored rules focusing on culprits are very important.
- Roughly 30% of the credit unions surveyed believe the Bureau is doing well in its (1) willingness to engage with the credit union industry and (2) compliance guides and other materials.
- About 15% of the credit unions surveyed believe the Bureau does well in (1) informing examiners and staff and (2) communicating with the credit union industry via blogs, social media, and websites.

CUNA urges the Bureau to consider this feedback from credit unions, as it is illustrative of the regulatory burden experienced since the Bureau's inception and its ramifications for consumers.

### **Bureau External Engagements**

CUNA values the outreach that the Bureau has engaged in with the credit union industry. We appreciate the frequent meetings, discussions, and roundtables the Bureau has conducted with credit unions throughout the country. We encourage the Bureau to continue to engage credit unions in its external outreach, as these efforts will assist in its understanding of the credit union business model and how regulations and additional requirements affect operations and service to consumers.

We have the following recommendations for the Bureau moving forward:

- The Bureau’s CUAC is a valuable asset and should be preserved. Credit unions have different structures and business models. This Council can educate the Bureau on credit union differences and how various regulations and requirements affect their operations.
- For CUAC meetings, we encourage the Bureau to maintain a balance between public and confidential portions of the meetings. Indeed, increasing the confidential portion of the meeting can lead to greater candor and frank dialogue by all parties. Former CUAC members have told CUNA that it would be helpful to have additional time for non-public meetings where constructive feedback can be more easily provided to Bureau officials and staff.
- The Bureau should provide frequent webinars and open communication through all channels with industry stakeholders about new rules and requirements. This outreach is critical for smaller financial institutions with fewer compliance resources.

## **Bureau Complaints Processing**

CUNA supports the ability of consumers to access timely and clear information on consumer financial products and services. Further, we recognize that the Dodd-Frank Act requires the Bureau to maintain a user-friendly and efficient method for consumers to lodge complaints regarding the improper activities of financial institutions. However, we continue to have concerns with the Bureau’s consumer complaint database overall.

We believe we are in an exceptionally strong position to evaluate the complaint system objectively for two reasons. First, the high level of consumer satisfaction with credit union services suggests that relatively few complaints will be filed with the Bureau concerning credit unions. As member-owned cooperatives, credit unions are simply less likely to offend their member-owners compared to institutions that serve customers only for purposes of rewarding investors. Second, only a small number of credit unions are large enough to have any consumer complaints included in the Bureau’s database.

Even though the number of credit union-related complaints is extremely low, to ensure the complaint intake process is effective, we urge the Bureau to take steps so that the number of non-substantive and meritless complaints does not increase. Thus, we urge the Bureau to revisit the complaint intake system’s process of filtering out clearly frivolous consumer complaints. While soliciting complaints via the Bureau’s website makes the process efficient for consumers, it also has the potential of increasing unfounded complaints. It is important that the Bureau be aware that each complaint a credit union receives—regardless of merit—has a cost to the credit union and in turn its members.

CUNA urges the Bureau to take appropriate steps to verify the legitimacy and accuracy, to the extent possible, of a consumer’s complaint and/or compliment prior to public disclosure. Further, under the current system, we believe it is possible that some institutions are effectively unable to respond to consumers’ narrative description of complaints due to privacy restrictions. We ask the Bureau to explore improvements to the process.

In addition, we ask the Bureau to reexamine its marketing of the complaint system to consumers. Since most credit unions are not supervised by the Bureau, any complaints regarding them should be directed to

the NCUA, not the Bureau. The Bureau's marketing directs consumers to the Bureau's complaint system, which causes confusion and delays in response when those consumers are then redirected to the NCUA and/or the credit union directly. The Bureau should explore how it can revise its marketing to alleviate consumer confusion and reduce unnecessary correspondence among agencies, institutions, and consumers.

### **Notice of Proposed Rulemaking/Advance Notice of Proposed Rulemaking**

The Dodd-Frank Act included numerous statutorily required rules with specific deadlines, most of which were concerning the mortgage rules that have already been issued. The only statutorily required rule remaining for the Bureau to implement is the Small Business Lending rule.

As future Bureau rules, including the small business lending rule, lack a statutorily required or set implementation timeline, we strongly urge the Bureau to employ greater use of ANPRs rather than only using the Notice of Proposed Rulemaking (NPR) process. An illustrative example of rulemaking that would have benefited from more external stakeholder engagement before moving forward is the Bureau's payday and small dollar lending rule.

### **Small Business Regulatory Enforcement Fairness Act (SBREFA)**

Credit unions are member-owned financial cooperatives that operate for the purpose of promoting thrift and providing access to credit. One-size-fits-all regulation does not work for Main Street: local credit unions, small community banks, and the consumers and small businesses they serve. This regulatory philosophy has created a rigged system favoring the largest institutions—the very institutions that caused the financial crisis that adversely impacted so many Americans—that can afford to comply with the “solutions” dreamt up in Washington. Now, over-regulation of small institutions is hurting consumers, costing them time and money, and limiting their financial product and service choices.

Congress anticipated the possibility of such problems and enacted protections for credit unions and other small financial service providers. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) amended the Regulatory Flexibility Act of 1980, to require some federal agencies to hold a SBREFA panel if the agency finds its proposed rule is likely to have a significant impact on a substantial number of small entities. The Bureau is one of the agencies required to engage in the SBREFA process, and credit union representatives have served as Small Entity Representatives (SERs) on several panels for its rulemakings.

While we appreciate that SBREFA adds a layer of protection for small credit unions, we believe the Bureau should consider the feedback it receives during this process more seriously, including by making changes to rulemakings before the proposal stage instead of merely asking for public comment in response to SER feedback. Additionally, we believe reforms to this process are needed to ensure there is more accountability if Bureau rules do not reflect feedback provided prior to publication of final rules, including during SBREFA panels.

Credit union employees divert time and resources from their daily jobs serving members to provide feedback to the Bureau on extremely complex SBREFA outlines of proposed rules. During the SBREFA

process, these representatives are usually given less than a month to: read and digest complex outlines which can require legal and economic analysis, work to determine how the Bureau's proposals could impact their credit union, and compile data and feedback that the agency itself may not have even collected on a wide scale basis or analyzed. In short, SERs are often asked to do as much work as a federal government agency, and meanwhile continue to operate their credit union and serve the many members relying on them for financial services. Moreover, they are asked to travel to Washington, D.C. to participate in a day long panel *on their own dime*, as well as participate in several conference calls beforehand.

While this process can be burdensome to the small credit unions that participate, they nonetheless continue to volunteer in the SBREFA process because they know that rules which do not account for different institutions' size and structure can be catastrophic, lead to the elimination of products and services, and accelerate small credit union consolidation. Too often in prior SBREFA panels, Bureau officials have willfully ignored the feedback credit union representatives have provided about harmful proposals, improperly tailored to their size and structure.

We are concerned that the Bureau views the SBREFA process as a check-the-box exercise, and often has not included the suggestions and feedback small credit unions have provided in proposed or final rules, despite the multiple sacrifices made to participate in the process. The condensed timeframe of SBREFA and the complexity of the outlines of rules under consideration have also made it difficult for credit unions to analyze and provide feedback on all aspects of multifaceted outlines within the 60-day window. On several occasions, some of the major problems that a rule could cause for credit unions were identified after the SBREFA process.

We have received feedback from many credit unions that participated on SBREFA panels that they felt final rules did not include enough changes and/or exemptions to limit the impact on small credit unions. As a result, small credit unions have had the most difficulty complying with new mortgage rules, even after participating in SBREFA. In August 2016, the Government Accountability Office released a report with observations from some of the earlier Bureau SBREFA panels, which found that out of the 57 SERs who participated, seven were reportedly satisfied with the Bureau's final rules.<sup>2</sup>

Based on CUNA's experience and the feedback we have received from credit unions, we have the following recommendations for the Bureau to ensure its SBREFA process is efficient and effective moving forward:

- SERs should receive preparation materials well in advance of a SBREFA panel to allow them to gather information and feedback prior to the meeting.
- The Bureau should conduct a series of calls with SERs prior to the SBREFA panel to review materials and receive feedback.

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<sup>2</sup> Government Accountability Office, Consumer Financial Protection Bureau Observations from Small Business Review Panels, (Aug. 2016) available at <http://www.gao.gov/assets/680/678964.pdf>.

- The Bureau should thoroughly consider comments by SERs before proposing rulemakings. Comments made by SERs should influence a proposed rule, not merely be mentioned in the proposal for public comment. If the Bureau must redraft proposals based on SER feedback, it should do so.
- SERs should receive the final SBREFA report before it is published in the *Federal Register* along with the proposed rulemaking.

### **The Bureau Should Work with the NCUA**

As the prudential regulator for federally-insured credit unions, the NCUA is the government expert on credit union operations. Because credit unions operate differently than banks and other for-profit financial institutions, regulatory requirements affect them differently. The NCUA understands the unique structure and business model of credit unions, and therefore should be engaged throughout the entire rulemaking process.

The Bureau should work with NCUA and use its credit union experience on future rulemakings affecting credit unions.

### **The Bureau Should Apply a Cost/Benefit Analysis to Rules for Credit Unions**

The Bureau prides itself on being a data-driven organization. Former Director Cordray often referred to the data beneath consumer complaints as the Bureau's "compass," playing a key role in identifying and prioritizing the agency's actions, including in the realm of rulemakings.

Data for data's sake is insufficient, and it is critical that the agency's policy and regulatory decisions be wholly supported by relevant, timely, representative data. Unfortunately, it is not uncommon for a Bureau rulemaking to lack (or at least appear to the public to lack) sufficient evidence, data, research, or other information to substantiate assertions within the rulemaking.

It is critical that the Bureau base its decisions on data. Almost equally as critical is that the Bureau be wholly transparent in its reliance on data, ensuring the public has access to the same information—absent confidential and personally identifiable information—the Bureau relies on as a foundation of its rulemakings.

### **The Bureau Should Coordinate Future Efforts**

Under Section 1042(a)(1) of the Dodd-Frank Act, state attorneys general and state regulators are empowered "to enforce provisions of this title or regulations issued under this title, and to secure remedies under provisions of this title or remedies otherwise provided under other law." Therefore, subject to some exceptions, state officials can enforce both the generic ban in Title X against unfair, deceptive or abusive conduct and any specific rules that the Bureau enacts. Without coordination between federal and state regulators, enforcement of consumer protections will overlap, leading to a patchwork of conflicting resolutions which will create uncertainty in the industry and confusion among the public.

Recently, several states have ramped up enforcement of consumer financial protections. At least two states, New Jersey and Pennsylvania, have created a “state-level” Bureau to spearhead enforcement. In December, state attorneys general from 17 states sent a letter to President Trump emphasizing their statutory authority to enforce state and federal consumer protection laws. The attorneys general further vowed to “redouble [their] efforts at the state level to root out such misconduct and hold those responsible to account” should the Bureau pursue a less aggressive enforcement posture.

While we respect the authority of the Bureau and the states to enforce Dodd-Frank Act provisions, we strongly urge the parties to coordinate to ensure enforcement is transparent and consistent.

### **Bureau Guidance and Implementation Support**

The past several years has seen a massive increase in consumer financial services regulations. The increase in regulations is particularly burdensome for credit unions which, unlike massive banks, do not have dozens of legal experts in house to assist with compliance questions. There are, however, ways in which the Bureau can assist the industry in complying with consumer financial services regulatory requirements.

CUNA has the following recommendations to enhance the Bureau’s ability to assist the industry with compliance with consumer financial services rules and requirements:

- The Bureau should accept inquiries regarding compliance with its regulations and guidance by telephone, email, or through its website. Responses to inquiries should be provided by Bureau staff within 24-48 hours of receiving the inquiry. For questions that require additional research, we strongly encourage Bureau staff to provide an initial response at least within the 24-48-hour timeframe.
- The Bureau should track questions it receives from the industry. These questions should be used by Bureau staff to make annual adjustments to regulations or commentaries to address ambiguities.
- If there are questions the Bureau receives frequently, we encourage it to also publish written guidance or Frequently Asked Questions (FAQs) with written interpretations to assist industry stakeholders on regulatory implementation. An example of helpful FAQs was the Department of Housing and Urban Development’s RESPA FAQs, which the industry regularly used as a resource.
- The Bureau should conduct interactive webinars on proposed and final rulemakings. Webinars should provide information about regulatory requirements and practical examples of how to comply with new requirements. Bureau staff should also take and answer industry questions received during the webinars. Questions can be answered during the live webinars or through follow-up written communications such as FAQ documents.
- We encourage the Bureau to provide both comprehensive final rule summaries and short one-page summaries for final rules. Both summaries are helpful resources and tools for industry

compliance. When possible, we strongly encourage the Bureau to provide flow charts that illustrate how to comply with various regulations. These resources can be especially helpful for smaller credit unions with limited compliance resources.

- The Bureau should place all its compliance resources, including recorded webinars, final rule summaries, and FAQ documents, in a central location on its website for easy and quick access.
- The Bureau should frequently update compliance guides on its website so industry stakeholders always have the most recent information accessible.
- The Bureau should also conduct annual outreach with industry stakeholders, especially credit unions, to receive feedback on its current compliance resources and what additional resources would be helpful to the industry.

## Conclusion

As CUNA indicated when the Dodd-Frank Act was enacted,

“Consumers of financial products, especially consumers of products and services provided by currently unregulated entities, need greater protections and a consumer financial protection agency 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 such an agency to work, consumer protection regulation must be consolidated and streamlined; it should not add to the regulatory burden of those who have been regulated and performed well, such as credit unions.”<sup>3</sup>

The need for consumer protection remains. Over the last several years, the Bureau has missed opportunity after opportunity to ensure that its rulemakings do not adversely impact credit unions’ ability to serve their members. We hope this process will lead the new leadership at the Bureau in the direction of ending one-size-fits-all regulation and bringing common sense to credit unions’ regulatory requirements.

On behalf of America’s credit unions and their 110 million members, thank you for holding this important hearing and considering our views.

Sincerely,



Jim Nussle  
President & CEO

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<sup>3</sup> Letter from Credit Union National Association to Members of the House of Representatives regarding H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act (June 30, 2010). *Available upon request.*

