CUNA Credit Union National Association

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The Honorable Jeb Hensarling
Chairman
Committee on Financial Services
House of Representatives
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives
Washington, DC 20515

Dear Chairman Hensarling and Ranking Member Waters:

On behalf of America's credit unions, I am writing regarding Consumer Financial Protection Bureau (CFPB) Director Mick Mulvaney's testimony concerning "The 2018 Semi-Annual Report of 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. With a mission to promote thrift and provide access to credit for provident purposes, credit unions were created to ensure that consumers had safe and affordable financial services. As member-owned, not-for-profit financial cooperatives, credit unions are financial intermediaries that operate exclusively in the interest of the consumers and small businesses they serve. Their existence has been positive for consumers because of the services they provide and the impact they have on the behaviors of for-profit entities. Credit unions are the best choice for Americans to conduct their financial services and they strive to be their best financial partner.

Credit unions' member-centric focus means that they approach consumer regulation differently than other market participants. Rather than impulsively rejecting the creation of the CFPB, credit unions acknowledged that consumers may need additional consumer protection targeted toward Wall Street banks and abusers of consumers, when Congress considered legislation that would become the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act.

One decade later, it is clear that the CFPB has let credit unions and consumers down. Rule after rule has impeded credit union service to their members. The direct impact of rules, like the remittance rule and various mortgage rules, have driven credit unions to leave markets or reduce their offerings. Even if overall industry volume increases, consumers lose when a credit union adjusts its offerings because of a rule that should have been targeted to abusers of consumers. Further the price tag for this one-size-fits-all regulation hits credit union member owners in the pocket book, costing them $6.1 billion in 2016 alone. Credit unions are frustrated that they have been made to pay for the sins of Wall Street banks and other abusers of consumers. The message they want Congress to hear is: enough is enough.

Frankly, there is a great deal of shared responsibility for the CFPB's failures. Congress erred by creating a regulator with overly broad authority operating within a structure that is not supported by the democratic traditions of our Republic. This allowed the initial leadership to overreach its rulemaking, supervisory and enforcement authorities, and it set up the bureau as a partisan, political piñata rather than an agent of consumer protection. While Director Mulvaney has made some very positive initial steps to point the CFPB in the right direction, Congress must correct the Bureau's structural defects and encourage the current and future Bureau leadership to act in the best interest of consumers and the financial entities that do right by them.

This letter outlines in greater detail how past actions by the CFPB have harmed credit unions' ability to serve their members, the immediate steps the Bureau should take under its present structure to reset its focus on abusers of consumers, and the statutory reforms necessary to ensure that consumers are well protected in the financial marketplace.

**Past CFPB Actions Have Harmed Credit Unions' Ability to Serve their Members**

America's credit unions value the CFPB's mission, "to make consumer financial markets work for consumers, responsible providers, and the economy as a whole." Unfortunately, credit unions' ability to provide their top quality and consumer-friendly financial products and services has been significantly impeded by rules implemented by the CFPB's initial leadership. The CFPB's overly broad rules that have imposed additional requirements on credit unions for the mistakes and irresponsible practices of other industry stakeholders.

In 2017, CUNA commissioned an update to its groundbreaking 2015 study of credit union regulatory burden. The new findings show that credit union regulatory burden costs have increased to an "elevated new normal," totaling an estimated $6.1 billion in 2016. Overall, costs are up more than $800 million compared with 2014. That is a 15.1 percent increase, which far exceeds the 2.8 percent inflation rate over the two-year period. In total, the credit union regulatory burden costs for 2016 translate to $115 per credit union household.

While the initial CFPB leadership regularly cited minor accommodations in some mortgage rules and the remittances rule as proof that it considered the impact on credit unions and their members, there is substantial evidence to the contrary. Credit unions continue to tell us that the accommodations the CFPB made are not sufficient and they do not fully take into consideration the size, complexity, structure or mission of all credit unions.

Outlined below is the feedback credit unions have given about certain areas where the CFPB has provided modifications.

*Ability to Repay/Qualified Mortgage (ATR/QM)*

One of the accommodations the CFPB touts as evidence that it is trying to help credit unions continue to serve their members is the expanded qualified mortgage (QM) safe harbor for small creditors and small creditor exemption for those operating in rural and underserved areas. While we are grateful there was some consideration for the smallest financial institutions, the expanded exemption for smaller creditors was provided after the Ability to Repay / Qualified Mortgage (ATR/QM) rule was finalized, creating compliance burdens that were preventable.

In a survey of CUNA members, 43 percent cited the QM rule as most negatively impacting the ability to serve members with mortgage products.[1] Therefore, these exemptions while a step in the right

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[1] Haller, Jon; Ledin, Paul; and Malla, Bandana, Credit Union National Association Impact of CFPB Rules Survey, *available at* https://www.cuna.org/uploadedFiles/CUNA/Legislative_And_Regulatory_Advocacy/Removing_Barrier

direction, did not provide full relief for many credit unions, who in some instances were forced to change their product offerings. All credit unions, not just the very smallest, have a different operating structure than banks and for-profit lenders. The regulatory changes implemented by the CFPB should reflect this difference. Modifications in the ATR/QM rule for all credit unions would be appropriate to ensure they can continue to effectively serve their members.

When the Bureau has been unwilling to make changes on its own accord, Congress has had to step in to direct changes, as it did through the Helping Expand Lending Practices in Rural Communities Act of 2015. Further accommodations within the authority of the Bureau are contemplated in S. 2155 the Economic Growth, Regulatory Relief and Consumer Protection Act. These are the type of actions we would hope the CFPB would take on its own accord in the future.

*Mortgage Servicing*

The CFPB notes that it has tailored its servicing rules by making certain exemptions for small servicers that service 5,000 or fewer mortgage loans. However, significant requirements under these rules are excluded from the exemption and must be followed by large and small servicers alike. Small servicers remain subject to requirements related to successors-in-interest, force-placed insurance and, in certain circumstances, early intervention requirements for borrowers in bankruptcy.

We continue to hear the most concerns about CFPB rules from the smallest credit unions, whom the CFPB claims to have helped most through its thresholds. In the recent survey of CUNA members, more than four in 10 credit unions (44%) that have offered mortgages sometime during the past five years indicate they have either eliminated certain mortgage products and services (33%) or stopped offering them (11%), primarily due to burden from CFPB regulations. Thirty percent of credit unions specifically cited the Mortgage Servicing rule as having negatively impacted their ability to serve members. Credit unions with assets of less than $100 million are the asset group most apt to have dropped their mortgage program altogether.

*Home Mortgage Disclosure Act*

The CFPB's HMDA rule is another example of a rule that was overly burdensome for credit unions. While the CFPB made an appearance of accommodating small mortgage lenders, the accommodations the original rule did not go nearly far enough. That is why we have long advocated for additional changes, including raising the threshold for reporting to 500 closed-end and open-end loans in a calendar year. We are grateful that the CFPB, under its new leadership, and the Senate, through the passage of S. 2155, have since acknowledge additional changes should be made to HMDA.

The changes policymakers are contemplating would provide much needed relief, particularly to smaller credit unions, which otherwise would undertake significant expense to bring their systems into compliance with a rule that does very little –if anything – to provide credit union members with additional protection and which may, depending on which additional data is ultimately made public, expose consumers to potential identity theft or fraud.

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s_Blog/Removing_Barriers_Blog/FINAL%20Report%20Summary%20only%20Impact%20of%20CFPB%20Survey%20Analysis.pdf (February 2017).

Unfortunately, when the CFPB gets it wrong the first time there is an immediate detrimental impact on credit union lending. The CFPB needs to do more cost benefit analysis and other research on the front end of rulemaking to ensure that its rules do not disproportionately impact smaller financial institutions and harm their consumers.

*Remittances*

Nowhere is the problem with the previous approach to rulemaking seen more clearly than in the impact of the Bureau's first major rulemaking on remittances. More than half of the credit unions that offered remittances prior to the rule have either stopped offering this service to their members or have significantly reduced offering the service to stay below the low exemption threshold. Indeed, even former CFPB Director Richard Cordray himself noted at a hearing in the House Financial Services Committee that 96% of international remittances now run through large banks or nonbank providers, the very abusers from whom this rule was designed to protect consumers.[2] A rule that drives credit union from a market and drives consumers into the arms of the abusers is not consumer protection.

*Small Dollar Lending*

In its recently finalized rule related to payday and small dollar lending, the CFPB recognized that credit unions play an important role in meeting the credit needs of small dollar, short term borrowers. Thankfully, the final rule exempted the NCUA Payday Alternative Loans Program, as CUNA, the National Credit Union Administration (NCUA), and the Small Business Administration suggested. We were very pleased to see this program preserved because there is no question it has served as a valuable service for consumers.

While much of credit union lending in this market is not impacted by the CFPB's rule, certain consumer friendly credit union products may still be covered including loans under 45 days. As the CFPB continues its analysis of small dollar lending, we urge it to consider a full carve-out for credit unions and additional flexibility in this market, so that credit unions can continue to expand their exemplary work in this area. The strongest consumer protection the CFPB could put in place would be a rule that encourages credit unions and other community lenders to engage this market and make it more difficult for lenders with a history of abusing consumers from doing so.

**Credit Unions' Vision for the CFPB under New Leadership**

At CUNA's recent Governmental Affairs Conference, CFPB Director Mulvaney described his approach to regulating credit unions, making it clear that he understood that credit unions did not cause the financial crisis and should not be regulated like those who did. Director Mulvaney understands that one-size-fits-all regulation does not work and the CFPB should be tailoring rules to the size and complexity of institutions. He recognizes that credit unions are owned by their members, so every time a cost is put on the backs of credit unions it comes out of the pockets of member. And, he is committed to continuing swift enforcement of those operating in the marketplace who are harming consumers.

[2] CFPB Director Richard Cordray in response to a question by Representative Nydia Velazquez (D-NY) at a hearing entitled, "Semi-Annual Report of the Bureau of Consumer Financial Protection." (April 5, 2017).

Credit union leaders and members welcome this perspective and are eager to see it put in action at the CFPB. To this end, we believe there are five initial steps the Bureau should take under its new leadership.

First, the Bureau should not propose or finalize any new regulatory requirements affecting credit unions, unless they are intended to provide relief from prior regulations. The CFPB should instead focus on enforcing current regulatory requirements, and ensuring Wall Street banks and other abusers of consumers pay a huge price for any harm to consumers.

Second, CFPB leadership and staff should take time to re-evaluate finalized rules to determine if changes, exemptions, or additional carve-outs would allow the credit union industry to more fully serve its members and provide more access to credit. We were encouraged by the process in which the Bureau has engaged to evaluate whether it is adequately protecting consumers. The Bureau has sought information on its enforcement, supervision, rulemaking, market monitoring, and education activities. We strongly support this approach of seeking feedback to improve outcomes for both consumers and covered entities and we are confident that this dialogue will help the CFPB better understand how credit unions serve consumers. A stronger understanding of the unique characteristics of credit unions, combined with a better approach that does not lump all financial services providers into one category, would improve the CFPB's work for consumers and increase access to safe and affordable credit. CUNA will be providing detailed suggestions in response to this effort.

Third, the CFPB should transfer examination and supervision for compliance with consumer protection regulation of all credit unions, including those over $10 billion in assets, to the National Credit Union Administration (NCUA). This change will enable the Bureau to fully focus its examination and enforcement on Wall Street banks and other abusers of consumers, while ensuring that credit unions continue to be adequately supervised.

Fourth, we urge the CFPB to continue receiving feedback from credit unions through the Credit Union Advisory Council (CUAC). Although, the CUAC is not statutorily mandated, it is a valuable resource in helping policymakers understand how regulations impact credit union members, their communities, and the everyday operations of credit unions.

Finally, the CFPB must effectively use its statutory exemption authority. The Dodd-Frank Wall Street Reform and Consumer Protection Act gives the CFPB clear authority to exempt any class of covered entity from its rules. Congress provided this authority so rules are appropriately tailored to address problems in the industry and are not overly burdensome for smaller, less complex institutions. Since its inception, the Bureau has failed to fully use this authority, to the detriment of credit unions, other community lenders and consumers. We appreciate the support Congress has given to urge the CFPB to appropriately use this authority.[3] We strongly support the Director's position that the CFPB

[3] Letter from 329 U.S. Members of the House of Representatives to CFPB Director Richard Cordray, *available at* http://www.cuna.org/Legislative-And-Regulatory-Advocacy/Legislative-Advocacy/Letters-and Testimony/Letters/2016/Stivers-Schiff-Letter-w-signatures/ (Mar. 14, 2016) and Letter from 70 U.S. Senators to CFPB Director Richard Cordray, *available at* http://www.cuna.org/Legislative-And-Regulatory-Advocacy/Legislative-Advocacy/Letters-and-Testimony/Letters/2016/160718-Letter-to-CFPB-on-Tailoring-Regulations/ (July 2016).

should not encumber credit union operations because of the predatory actions of Wall Street banks and other consumer abusers.

**CUNA Continues to Support a Commission, Rather than a Single Director Structure for CFPB Leadership**

While there are steps the Bureau must take, Congress also has a responsibility to act to ensure that the CFPB can be an agent of consumer protection. The current structure—with one powerful director—gives too much authority to one person and does not provide enough oversight and accountability. Congress should enact legislation that changes the leadership structure to a multi-member, bipartisan commission.

Over the years, significant questions and concerns regarding the Bureau's expansive power and the actions taken by both Directors have been raised by Members of Congress and other stakeholders. In the Bureau's recent semi-annual report, Director Mulvaney highlights concerns with the CFPB's structure, stating:

> "As has been evident since the enactment of the Dodd-Frank Act, the Bureau is far too powerful, and with precious little oversight of its activities. Per the statute, in the normal course the Bureau's Director simultaneously serves in three roles: as a one-man legislature empowered to write rules to bind parties in new ways; as an executive officer subject to limited control by the President; and as an appellate judge presiding over the Bureau's in-house court-like adjudications."[4]

The pending legal dispute concerning the CFPB leadership provides a prime example of why the current structure is dangerous for the financial services marketplace. Confusion about the CFPB's leadership, creates uncertainty about the status of pending rules and rule effective dates, examination schedules, and the many other required credit union actions from the CFPB that impact their operations and ability to provide financial services on a daily basis to their members.

A multi-member commission, which was originally envisioned by the proponents of the Bureau, would enhance consumer protection by ensuring that diverse perspectives are included in final rules and prevents disruptions caused by personnel changes. Credit union members and other consumers would benefit from policymaking that includes more voices. This system would be much more consistent with the traditions of our democracy, and would provide certainty that is essential for consumers and the financial services industry, regardless of which political party is in the White House.

Perhaps the best evidence of the virtues of a CFPB commission is the fact that leaders of both parties have supported a multi-member commission only to back off that support when it was politically convenient to do so. This type of political approach is a disservice to the consumers the Bureau is entrusted to protect. Thankfully, Representatives Dennis Ross, Kyrsten Sinema, Ann Wagner and David Scott introduced legislation to create a bipartisan, five-member commission to lead the CFPB. CUNA strongly supports H.R. 5266, the Financial Product Safety Commission Act of 2018, and we encourage the Committee to consider the legislation as soon as possible.

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[4] https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-semi-annual-report/

**Conclusion**

As the original consumer financial protectors, credit unions are in the marketplace every day offering consumers access to safe and affordable financial services, and they stand ready to work with Congress and the CFPB to ensure that consumers have adequate protections in law and regulation. We look forward to working with the CFPB and Congress to improve upon the past work of the Bureau, while strongly supporting a continued focus on eliminating bad actors in the financial services marketplace.

On behalf of America's credit unions and their 110 million members, thank you for your consideration of these requests.

Sincerely,

Jim Nussle
President & CEO