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The Honorable Trey Gowdy  
Chairman  
Committee on Oversight and Government  
Reform  
United States House of Representatives  
Washington, DC 20515

The Honorable Elijah Cummings  
Ranking Member  
Committee on Oversight and Government  
Reform  
United States House of Representatives  
Washington, DC 20515

Dear Chairman Gowdy and Ranking Member Cummings:

On behalf of America's credit unions, I am writing regarding the hearing, "Shining Light on the Federal Regulatory Process." The Credit Union National Association (CUNA) represents America's credit unions and their more than 110 million members. Thank you for the opportunity to submit this letter for the record of the hearing.

**There Are Many Small Credit Unions Serving Consumers, and They Are Harmed Most by Poorly Tailored Rules and Policymaking**

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 banks, and the consumers and small businesses they serve. This regulatory philosophy has created a rigged system favoring the largest institutions who can afford to comply with the "solutions" dreamt up in Washington – the very institutions that caused the financial crisis that hurt so many. Now, over-regulation of small institutions is hurting consumers, costing them time and money, and limiting their choices.

Nearly half of all credit unions employ five or fewer full-time employees; more than half have assets of less than \$50 million; and over 40% have less than \$20 million in assets. Despite the large number of small credit unions and the indisputable difference in structure and resources between them and the largest banks, they have been subjected to more than 200 regulatory changes since the financial crisis that they did not cause. This has equated to several thousand pages of new or modified requirements despite already extremely high satisfaction ratings from consumers<sup>1</sup> and despite that credit unions already deliver roughly \$10 billion in savings to members every year.<sup>2</sup>

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<sup>1</sup> Blyskal, Jeff, "Choose the Best Bank for You." *Consumer Reports*, available at <http://www.consumerreports.org/banks-credit-unions/choose-the-best-bank-for-you/> (Dec. 4, 2015). "Credit unions are among the highest-rated services they have ever evaluated, with 93 percent of their customers highly satisfied."

<sup>2</sup> Credit Union National Association, *State-by-State Data on the Benefits of Credit Union Membership*, available at <https://www.cuna.org/Legislative-And-Regulatory-Advocacy/Legislative-Advocacy/Legislative-Hot-Topics/State-by-State-Data-on-the-Benefits-of-Credit-Union-Membership/>.

## **CFPB Bulletins Should be Subject to the CRA**

The Congressional Review Act (CRA) has been one tool in combating poorly tailored rules that unnecessarily sweep credit unions into them. Under the CRA, the Consumer Financial Protection Bureau (CFPB), among other agencies, must prepare a report on each final rule for each House of Congress and the Comptroller General of the Government Accountability Office.<sup>3</sup> One of the requirements is a decision by the administrator of OMB OIRA as to whether the rule is a “major rule” as defined by the CRA.<sup>4</sup> Recently, the U.S. Government Accountability Office examined the question of whether a nonbinding general statement of policy, which provides guidance on how CFPB will exercise its discretionary enforcement powers, is a rule under CRA.<sup>5</sup> The GAO concluded that CRA requirements apply to general statements of policy which, by definition, are not legally binding. Specifically, it found that the CFPB’s Indirect Lending bulletin was subject to the CRA noting that, “The Bulletin is a general statement of policy designed to assist indirect auto lenders to ensure that they are operating in compliance with ECOA and Regulation B, as applied to dealer markup and compensation policies. As such, it is a rule subject to the requirements of CRA.” Credit unions support this concept since CFPB bulletins, like rules, should take into account unintended consequences on smaller financial institutions. And, credit unions and their members deserve to be protected by the requirements of the Administrative Procedures Act (APA) such as the opportunity for Notice and Comment.

## **The Department of Defense’s Interpretive Rule for MLA is Problematic**

Since the Military Lending Act (MLA) Regulation was adopted by the Department of Defense (DoD) in 2015, it has twice issued guidance—the Interpretive Rule in 2016<sup>6</sup> and amendments to the Interpretive Rule in 2017<sup>7</sup>—in an effort clarify confusion with aspects of the regulation. In general, the Interpretive Rule as issued in 2016 and amended in 2017 has been beneficial to credit unions, as it provides answers to long-standing questions among creditors. However, while some of the 2017 revisions to the Interpretive Rule are helpful, aspects of the 2017 changes, specifically Q2 is very problematic and circumvented protections in the APA. This has caused constricted access to credit and service for servicemembers and creates liability exposure for the credit unions serving them.<sup>8</sup> This is an example of a problematic regulatory directive issued with few procedural standards.

## **Credit Unions and their Members Would Benefit from an Improved SBREFA Process**

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 Consumer Financial Protection Bureau (CFPB) is one of the agencies that must 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

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<sup>3</sup> 44 U.S.C. 3501 et seq.

<sup>4</sup> 5 U.S.C. 801(a)(1)(ii); 5 U.S.C. 804(2)

<sup>5</sup> <https://www.gao.gov/assets/690/688763.pdf>

<sup>6</sup> 81 Fed. Reg. 58,840 (Aug. 26, 2016).

<sup>7</sup> 82 Fed. Reg. 58,739 (Dec. 14, 2017).

<sup>8</sup> CUNA-DCUC Petition to Withdraw Question & Answer 2 from the Guidance to the Department of Defense’s Military Lending Act Regulation (Feb. 1, 2018), available at [https://www.cuna.org/uploadedFiles/CUNA-DUC%20Petition%20to%20DoD%20re%20MLA%20Guidance\\_final.pdf](https://www.cuna.org/uploadedFiles/CUNA-DUC%20Petition%20to%20DoD%20re%20MLA%20Guidance_final.pdf)

unions, we believe the CFPB should be taking the feedback it receives during this process more seriously. Additionally, we believe reforms to this process may be needed to ensure there is more accountability if CFPB rules do not reflect the feedback provided during the SBREFA panels and prior to the publication of final rules.

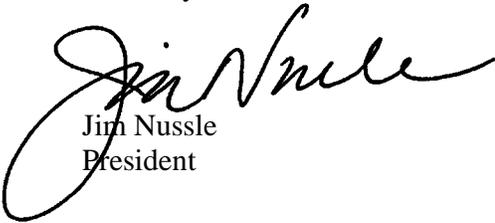
Credit union employees have taken time and resources away from their daily jobs serving members to provide feedback to the CFPB on extremely complex SBREFA outlines with ideas for proposed rules. During the SBREFA process, these representatives are usually given less than a month to: read and digest complex outlines which can require legal and economic analysis, work to determine how the CFPB'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, they 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 across the country to Washington, D.C. to participate in an all-day-long panel *at their own expense*, as well as participate in several conference calls beforehand.

While this process can clearly be extremely burdensome to the small credit unions that participate, they continue to seek to participate in the SBREFA process and believe the concept of SBREFA is a very valuable one. This is because alternatively, rules that 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 past SBREFA panels, CFPB officials have willfully ignored the feedback credit union representatives have provided to them about the harm rules, not properly tailored to their size and structure cause community financial institutions.

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 the multifaceted outlines before the 60 days ends. On several occasions, some of the major problems that the rule could cause for credit unions were identified after the SBREFA process.

Credit unions appreciate that the Committee's efforts to assess federal agencies' processes for and compliance with rulemaking and guidance procedure requirements. Thank you for your time and attention to our concerns.

Sincerely,



Jim Nussle  
President