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April 17, 2018

The Honorable Jerry Moran
United States Senate
Washington, DC 20510

The Honorable Pat Toomey
United States Senate
Washington, DC 20510

Dear Senators Moran and Toomey:

On behalf of America's credit unions, I am writing in support of S.J.Res.57, a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Consumer Financial Protection Bureau (CFPB) relating to "Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act." The Credit Union National Association (CUNA) represents America's credit unions and their 110 million members.

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 and despite that credit unions already deliver roughly \$10 billion in savings to members every year.¹

CFPB Bulletins Should be Subject to the CRA

The Congressional Review Act (CRA) has been one tool in combating poorly tailored rules that unnecessarily apply to credit unions. Under the CRA, the CFPB, among other agencies, must prepare a report on each final rule for each House of Congress and the Comptroller General of

¹ 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/>.

the U.S. Government Accountability Office (GAO).² One of the requirements is a decision by the administrator of Office of Management and Budget (OMB) Office of Information and Regulatory Affairs (OIRA) as to whether the rule is a “major rule” as defined by the CRA.³ Recently, the GAO examined the question of whether a nonbinding general statement of policy, which provides guidance on how the CFPB will exercise its discretionary enforcement powers, is a rule under CRA. 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.

Credit Unions Support Using the CRA for Indirect Auto Lending Guidance

The CFPB fair lending guidance bulletin was unsupported by research or data. Credit unions support the goal of fair lending and strongly oppose any discriminatory policies. However, this guidance bulletin was also not issued through the normal course of the APA or the public rulemaking process. As such, we support S.J.Res.57. Policymaking in this area should be open to the public input and responsive to those comments.

Credit unions appreciate Congress’s efforts to curtail policymaking conducted outside of the scope of authority granted to the CFPB, particularly when the agency circumvents the public protections found in the APA and other rulemaking requirements. On behalf of America’s credit unions and their 110 million members, thank you for your attention to our concerns.

Sincerely,



Jim Nussle
President & CEO

² 44 U.S.C. 3501 et seq.

³ 5 U.S.C. 801(a)(1)(ii); 5 U.S.C. 804(2).