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The Honorable Mike Crapo
Chairman
Committee on Banking, Housing and Urban
Affairs
United States Senate
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban
Affairs
United States Senate
Washington, DC 20510

Dear Chairman Crapo and Ranking Member Brown:

On behalf of America's Credit Unions, I am writing regarding Consumer Financial Protection Bureau (CFPB) Director Kathy Kraninger's Semi-Annual Report to Congress. The Credit Union National Association (CUNA) represents America's Credit Unions and their 115 million members. We request this letter be added to the record of the hearing, and we appreciate your consideration of our views.

Credit unions work every day to advance their communities and empower their members' financial well-being. It is critical that the regulatory structure to which credit unions are subject, as well as the regulations that they must follow, enable them to meet the diverse and evolving financial services needs of America's credit union members. There are several steps that Congress and the CFPB should take to ensure credit unions can continue to be consumers' best financial partner.

A Bipartisan Commission at the CFPB, as proposed by Elizabeth Warren and President Obama, Is Essential to Ensuring the Bureau's Independence

We urge Congress to consider changes to the CFPB's structure to align it with the legislation that then-Harvard Professor Elizabeth Warren and President Barack Obama proposed to Congress in 2009, and which Republicans in Congress supported in the early years of the Bureau's existence. Recently, Representative Blaine Luetkemeyer (R-Mo.) introduced the "Consumer Financial Protection Commission Act," which would establish a five-member bipartisan commission to lead the Bureau. CUNA has repeatedly called on Congress to bring stability and accountability to the CFPB and, as a result, we strongly support this latest effort.

The current structure—with a single director—gives too much authority to one person and does not provide meaningful oversight and accountability. It ultimately fails consumers. First, it disrupts consumer protection and functioning markets in an interest to achieve a political agenda that suits the party of the president; second, it produces frequent and severe changes in policy that increase costs of compliance that are generally passed on to consumers in the form of higher interest rates and fees, making credit and services more expensive and less available, particularly to vulnerable borrowers. While entities that must comply with the ever-changing regulatory perspective that the Bureau's structure produces may have a loud voice, be assured that the consumers the Bureau was intended to protect are the ones who pay the ultimate price of this misguided structure.

To ensure consumers benefit from both strong protections as well as regular access to products and services, Congress should enact legislation that changes the Bureau's leadership structure to a multimember, bipartisan commission. A multi-member commission, as envisioned by the original proponents of the Bureau, would enhance consumer protection by ensuring that diverse perspectives are considered prior to finalizing rules and prevent disruptions caused by leadership changes. Credit union members and other consumers would benefit

from transparent policymaking that includes more voices. This structure is 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 controls 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 Congress has entrusted the Bureau to protect.

Proponents of the CFPB often argue its present structure renders it politically independent; but in less than a decade, the CFPB has proven itself to be independent only from the minority political party. The Founders of the Republic understood that true political independence comes from having multiple voices at the decision-making table, as opposed to a single decision maker.

Finally, we find folly by the argument that a commission would not be a better structure because the Senate has shown itself unable to fill other boards and commissions. Americans expect their legislative leaders to work it out in the interest of all consumers, not in the interest of political posturing. They should not have to pay a price because Senators are unable or unwilling to exercise a basic function of Article II of the Constitution.

As we said when the CFPB was originally proposed,

Consumers of financial products, especially for consumers of products and services provided by currently unregulated entities, need greater protections, and CUNA agrees that a CFPB could be an effective way to achieve that protection, provided the agency does not impose duplicative or unnecessary regulatory burdens on credit unions.¹

A decade later, this remains our view. The Bureau could be an effective way to achieve important consumer protections, if Congress takes the steps to fix the Bureau by changing the structure to a bipartisan commission as originally envisioned by then-Harvard Professor Elizabeth Warren and President Obama and as previously supported by former House Financial Services Committee Chairman Jeb Hensarling and several current Republican members of this committee.

The CFPB's Execution of Its Regulatory Agenda Should Ensure Credit Unions and Other Providers Are Able to Provide Efficient, Safe and Affordable Products and Services

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 members with high-quality and consumer-friendly financial products and services has been significantly impeded by several rules promulgated under past leadership. As mentioned above, the CFPB's overly broad approach to rulemaking resulted in burdensome regulatory requirements being imposed on credit unions based on the mistakes and irresponsible practices of other industry stakeholders.

Outlined below are high-level priorities and recommendations credit unions have provided to the CFPB regarding its regulatory approach and several specific rules:

Regulating America's Credit Unions

CUNA has strongly urged the Bureau to closely monitor the impact that its rules have had on credit unions and their members and to appropriately tailor regulations to reduce burden or exempt credit unions entirely, as appropriate. If the Bureau spent fewer resources on regulating and supervising credit unions and other small lenders subject to federal prudential regulation, then it could spend more time focusing on entities that may be

¹ Letter from Credit Union National Association to House Financial Services Committee Chairman Barney Frank. July 14, 2009.

actively engaged in objectionable practices that exploit consumers. We believe this can be accomplished without sacrificing important consumer protections provided by credit unions.

Throughout their history, credit unions have been supervised by several different federal agencies. The lesson that comes through clearly, based on these different supervisory arrangements, is that credit unions are best positioned to succeed when supervised and examined by a regulatory agency that has familiarity with the characteristics that differentiate credit unions from other financial services providers. For that reason, the CFPB should aim to work more closely with the National Credit Union Administration (NCUA) throughout the rulemaking process and use its statutory authority to transfer consumer protection regulation supervision of the largest credit unions to NCUA. The NCUA understands the credit union model and operational issues and is best equipped to examine and supervise credit unions for regulatory compliance.

Effectively Using Statutory Authority

In the wake of the financial crisis, Congress contemplated the need for exceptions to certain rules and crafted the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to authorize the Bureau to tailor its rules so those acting responsibly in the financial services marketplace are not needlessly hampered by those rules. Congress deliberately provided this authority expressly in Section 1022 of the Dodd-Frank Act.

*The Bureau, by rule, may conditionally or unconditionally exempt **any class of covered persons, service providers or consumer financial products or services** from any provision of this title, or from any rule issued under this title (Emphasis added)²*

Congress' words are unambiguous and clearly grant the CFPB the authority to exempt any class of covered entities from its rules. CUNA has strongly urged the Bureau to use this authority to help protect credit union members from the many problems associated with creating one-size-fits-all rules that are inappropriate for the different not-for-profit structure of credit unions. Credit unions and credit union service organizations (CUSOs) should receive appropriate exemptions from the Bureau's regulatory requirements. However, it is critically important for the Bureau to understand that credit unions are not asking to be exempt from all its rules; instead, we ask the Bureau to consider, in the course of promulgating new rules or changes to existing rules, whether the regulations credit unions are presently following need to be changed. In short, if credit unions are not contributing to the problems that the Bureau is trying to address, then they should not be subject to the rules targeting those problems.

Debt Collection

The Bureau is in the process of promulgating the first set of rules under the 40-year old Fair Debt Collection Practices Act (FDCPA). As you know, this law was enacted to establish guidelines and limitations on the practices of third-party debt collectors. Many credit unions use third party collectors to assist with the collection of delinquent accounts, and when they do so, the collection practices are subject to the FDCPA.

In passing the FDCPA, Congress excluded lenders collecting their own debt (first-party collectors) from the law's coverage because it recognized, unlike third-party collectors whose relationship with the debtor exists solely to collect payments, first-party collectors have significant incentive to protect their good will and maintain an ongoing banking relationship with the borrower long after the collections process has been concluded. This relationship-based approach to first-party debt collection holds true today and, therefore, CUNA would strongly oppose any effort through legislation or regulation to expand the FDCPA to credit unions that collect their own debts.

² 12 U.S.C. § 5512(b)(3)(a).

Short-term Small Dollar Lending

Credit unions often provide the safest and most affordable loan options for consumers in need of emergency credit. The Bureau's rules governing short-term, small dollar lending should be meaningfully tailored to address predatory practices in the small dollar, short-term lending space. However, any rule targeted toward underregulated payday lenders should be crafted so as not to inhibit credit unions from offering affordable small dollar loan products to members in need. CUNA has called on the Bureau to revise its current payday rule to allow more credit unions to enter the short-term, small dollar lending space. Such revisions would include creating a broader, express exemption for credit union loan products and working with the National Credit Union Administration (NCUA) to expand the partial carve-out for the Payday Alternative Loan I (PAL) program to cover the recently established PAL II option.

Remittances

While CUNA is supportive of appropriate safeguards for consumers initiating remittance transfers, including clear and understandable disclosures, we have also recommended the CFPB propose and finalize substantive amendments to the Remittance Rule to better balance necessary consumer protections with a more tailored regulation that allows consumers access to desired products and services. In this instance, the Bureau should adopt several revisions to the pending proposed rule:

- Increase the “normal course of business” safe harbor threshold from 500, as proposed, to 1,000 remittance transfers;
- Increase the thresholds for both the proposed exchange rate exemption and third-party fees exemption to 2,000 or fewer transfers; and
- Eliminate the 30-minute cancellation requirement or provide consumers the ability to opt-out of the mandated waiting period.

Historically, remittances have been a significant and, depending on a credit union's field-of-membership, popular service offered to members. CUNA believes the Remittance Rule, as it currently stands, has made it increasingly difficult for the nation's credit union members to obtain a service that is important to the financial well-being of many individuals.

Home Mortgage Disclosure Act (HMDA)

The Bureau has consistently acknowledged that credit unions maintained sound credit practices through the economic crisis and did not engage in the practices that led to the crash of the housing market. Nevertheless, the CFPB chose to adopt a HMDA Rule in 2015 that disproportionately burdened credit unions with finite resources despite no evidence of past wrongful conduct. This overly broad treatment makes little sense especially when considering credit unions' field of membership requirements.

While some HMDA relief was provided to smaller institutions as a result of S. 2155 - Economic Growth, Regulatory Relief, and Consumer Protection Act, CUNA recommends the CFPB to consider additional modifications to Regulation C that would provide meaningful, reasonable accommodations to credit unions:

- Allow reporting for Home Equity Lines of Credit (HELOCs) to once again be voluntary;
- Reduce the HMDA data set for all credit unions to only those data points specifically required by statute; and
- Increase the open-end line of credit and closed end mortgage loan reporting thresholds to exempt credit unions with smaller mortgage lending portfolios from HMDA reporting.

Ability-to-Repay/Qualified Mortgage

The Bureau completed and issued an assessment report on the impact of the 2013 Ability-to-Repay and Qualified Mortgage Rule (ATR/QM rule). Recently, the CFPB issued an advance notice of proposed rulemaking on whether to propose revisions to the definition of QM considering the planned expiration of the Temporary GSE QM “patch.” This temporary category of QM is scheduled to expire in January 2021.

In response to the reconsideration of the GSE QM “patch,” CUNA has recommended the Bureau explore the following amendments to the rule to preserve access to sustainable loans for creditworthy borrowers and avoid market disruption:

- Eliminate from the general QM category the debt-to-income (DTI) ratio requirement and the associated Appendix Q;
- Maintain and enhance the existing ATR regulatory language; and
- Maintain the existing QM statutory safe harbor restrictions that prohibit certain risky loan features (e.g., no terms over 30 years, no negative amortization, no interest-only payments, no balloon payments, documented and verified income, etc.) and clarify provisions related to documentation and verification of income.

Unfair, Deceptive, or Abusive Acts or Practices (UDAAP)

In the past, the Bureau engaged in the practice of “regulation by enforcement,” especially in regard to the “abusiveness” standard. The Bureau’s “I know it when I see it” approach has resulted in uncertainty to the financial services marketplace and presents due process concerns. CUNA is supportive of the Bureau’s recent steps toward establishing clear standards for and transparency in what is considered “abusive” behavior. However, the recent policy statement on abusive should be merely the first step on the path toward greater clarity.³

Regarding the process for a future action, CUNA recommends the Bureau:

- Continue to solicit stakeholder feedback on the “abusiveness” standard to determine whether a future rulemaking is necessary;
- Clarify that previous enforcement actions or consent orders that conflict with statutory or judicial precedent create no new expectations for compliance; and
- Clarify and reaffirm the Bureau’s narrow authority under the Dodd-Frank Act in regulating the business of insurance and that UDAAP is not a backdoor to regulate insurance activities.

Small Business Data Collection

The Dodd-Frank Act amended the Equal Credit Opportunity Act (ECOA) to require financial institutions to compile, maintain, and submit to the Bureau certain data on credit applications by women-owned, minority-owned, and small businesses.

Credit unions’ unique and distinct memberships, a consequence of legally-mandated fields of membership, would not correspond with the Bureau’s plans for data collection and would likely result in data that does not portray a complete or accurate picture of credit union lending. CUNA has recommended any rule issued under this authority expressly exclude credit unions from reporting requirements. The regulatory burden likely to be associated with this rule, particularly for smaller credit unions, could harm the ability of small business owners to obtain needed credit from their credit union.

³ CFPB Announces Policy Regarding Prohibition on Abusive Acts or Practices (January 24, 2020) available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-policy-regarding-prohibition-abusive-acts-practices/>

Industry Outreach

CUNA values the outreach the CFPB has engaged in with the credit union industry. We appreciate the meetings, discussions, and roundtables conducted throughout the country, and we encourage the CFPB to continue with this engagement. These efforts will assist in the agency's understanding of the credit union business model and how regulations and additional requirements affect operations and service to consumers.

In particular, the CFPB's Credit Union Advisory Council (CUAC) is a valuable asset, and we are pleased that the Council is actively utilized by the Bureau. We support a statutory requirement for this Council, as well as longer terms for CUAC members, such as three-year terms. CUNA also supports roundtable discussions with credit unions of all sizes throughout the country before rulemakings are conducted that could affect credit union operations. Roundtables can be conducted throughout the United States, in various locations, to ensure feedback is representative of all credit unions. We also encourage the Bureau to conduct discussions with Credit Union Service Organizations (CUSOs).

Furthermore, CUNA encourages the Bureau to 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.

Cost/Benefit Analysis to Rules for Credit Unions

The Bureau prides itself on being a data-driven agency. Unfortunately, there have been Bureau rulemakings that lacked or did not demonstrate sufficient evidence, data, research, or other information to substantiate assertions within the rulemaking.

CUNA urges the Bureau to base its rulemakings on thorough data and research. The Bureau should also be wholly transparent in its reliance on data, ensuring the public has access to the same information that the Bureau relies on as a foundation for its rulemakings.

Guidance and Implementation Support

The past several years has seen a massive increase in consumer financial services regulations. This increase in regulations is particularly burdensome for credit unions which, unlike big banks, do not have dozens of legal experts in house to assist with compliance questions.

CUNA encourages the Bureau to provide compliance resources to the industry, such as Frequently Asked Questions (FAQs) with interpretations, to assist industry stakeholders on regulatory implementation. An example of helpful FAQs was the Department of Housing and Urban Development's Real Estate Settlement Procedures Act FAQs, which the industry regularly used as a resource.

We also encourage the Bureau to conduct webinars on final rulemakings, with opportunities for questions and answers from Bureau staff. The Bureau should house all of its compliance resources, including recorded webinars, final rule summaries, and FAQ documents in a central location on its website. 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 help the industry.

Financial Health, Literacy, and Educational Outreach Efforts

The most effective way to protect consumers is through education. Credit unions are uniquely positioned to provide financial education resources to members and to focus on consumer financial well-being. Credit unions are instruments to bring cooperative credit to communities. Because their members have equal ownership stakes

in the credit union, it has a direct interest in promoting the financial literacy and sound financial judgment of each member.

CUNA encourages the CFPB to work with our organization, credit unions, and the National Credit Union Foundation in its consumer education efforts. We are all effective partners because our priority is the financial health of consumers.

Furthermore, CUNA strongly recommends the Bureau utilize financial education efforts to guide consumer behavior. This approach, rather than additional rulemakings to guide consumer choices, provides the foundation for solid consumer financial health. Consumer education is proactive, not reactive, and should be the Bureau's default when addressing consumer financial services issues or industry practices. CUNA, credit unions, and the Foundation are able and willing partners in consumer education initiatives implemented by the Bureau.

Conclusion

As CUNA stated when the Dodd-Frank Act was enacted:

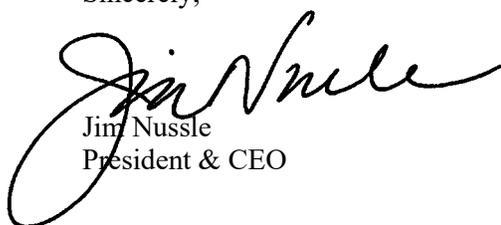
“Consumers of financial products, especially consumers of products and services provided by currently unregulated entities, need greater protections and a consumer financial protection agency could be an effective way to achieve that protection, provided the agency does not impose duplicative or unnecessary 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.”⁴

The need for consumer protection remains, but rulemakings must be targeted to address the problems in the industry and exclude credit unions from additional requirements when credit unions are not engaged in the problematic activity.

We look forward to collaborating with the CFPB and Congress to improve upon the past work of the Bureau, while strongly supporting a continued focus on reigning in bad actors in the financial services marketplace.

On behalf of America's Credit Unions and their 115 million members, thank you for holding this important hearing.

Sincerely,



Jim Nussle
President & CEO

⁴ 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 20, 2010).