NAFCU

National Association of Federal Credit Unions

Testimony of

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On Behalf of

The National Association of Federal Credit Unions

"Examining Credit Union Regulatory Burdens"

Before the

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Introduction

Good afternoon, Chairman Capito, Ranking Member Meeks and Members of the Subcommittee. My name is Robert Burrow and I am testifying this afternoon on behalf of the National Association of Federal Credit Unions (NAFCU). I serve as the President and CEO of Bayer Heritage Federal Credit Union in Proctor, West Virginia. Bayer Heritage has more than 29,000 members with assets totaling about $300 million. With 10 branches in four states, including West Virginia, Pennsylvania, South Carolina and Texas, we strive to improve the well-being of our member-owners each and every day.

NAFCU is the only national organization exclusively representing the interests of the nation's federally chartered credit unions. NAFCU member credit unions collectively account for approximately 68 percent of the assets of all federally chartered credit unions. NAFCU and the entire credit union community appreciate the opportunity to discuss much needed regulatory relief for credit unions. The overwhelming tidal wave of new regulations in recent years is having a profound impact on credit unions and their ability to serve the 94 million member-owners nationwide.

Historically, credit unions have served a unique function in the delivery of essential financial services to American consumers. Established by an Act of Congress in 1934, the federal credit union system was created, and has been recognized, as a way to promote thrift and to make financial services available to all Americans, many of whom may otherwise have limited access to financial services. Congress established credit unions as an alternative to banks and to meet a precise public need – a niche that credit unions still fill today.

Every credit union is a cooperative institution organized “for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes.” (12 USC 1752(1)). While nearly 80 years have passed since the Federal Credit Union Act (FCUA) was signed into law, two fundamental principles regarding the operation of credit unions remain every bit as important today as in 1934:

- credit unions remain wholly committed to providing their members with efficient, low-cost, personal financial service; and,

- credit unions continue to emphasize traditional cooperative values such as democracy and volunteerism.

Credit unions are not banks. The nation’s approximately 6,800 federally insured credit unions serve a different purpose and have a fundamentally different structure than banks. Credit unions exist solely for the purpose of providing financial services to their members, while banks aim to make a profit for a limited number of shareholders. As owners of cooperative financial institutions united by a common bond, all credit union members have an equal say in the operation of their credit union—“one member, one vote”—regardless of the dollar amount they have on account. Furthermore, unlike their counterparts at banks and thrifts, federal credit union directors generally serve without remuneration—a fact epitomizing the true "volunteer spirit" permeating the credit union community.

America's credit unions have always remained true to their original mission of "promoting thrift" and providing "a source of credit for provident or productive purposes." In fact, Congress acknowledged this point when it adopted the Credit Union Membership Access Act (CUMAA – P.L. 105-219). In the "findings" section of that law, Congress declared that, "The American credit union movement began as a cooperative effort to serve the productive and provident credit needs of individuals of modest means … [and it] continue[s] to fulfill this public purpose."

Credit unions have always been some of the most highly regulated of all financial institutions, facing restrictions on who they can serve and their ability to raise capital. Furthermore, there are many consumer protections already built into the Federal Credit Union Act, such as the only federal usury ceiling on financial institutions and the prohibition on prepayment penalties that other institutions have often used to bait and trap consumers into high cost products.

Despite the fact that credit unions are already heavily regulated, were not the cause of the financial crisis, and actually helped blunt the crisis by continuing to lend to credit worthy consumers during difficult times, they are still firmly within the regulatory reach of several provisions contained in the Dodd-Frank Act, including all rules promulgated by the Consumer Financial Protection Bureau (CFPB). The breadth and pace of CFPB rulemaking is troublesome as the unprecedented new compliance burden placed on credit unions has been immense.

The impact of this growing compliance burden is evident as the number of credit unions continues to decline, dropping by more than 700 institutions since 2009. While there are a number of reasons for this decline, a main one is the increasing cost and complexity of complying with the ever-increasing onslaught of regulations. Credit unions didn't cause the financial crisis and shouldn't be caught in the crosshairs of regulations aimed at those entities that did. Unfortunately, that has not been the case thus far. Accordingly, finding ways to cut-down on burdensome and unnecessary regulatory compliance costs is a chief priority of NAFCU members. As evidenced by today's hearing, it is clearly a priority of the Subcommittee. We appreciate the committee's focus on this important issue.

Growing Regulatory Burdens for Credit Unions

A 2011 NAFCU survey of our membership found that nearly 97% of respondents were spending more time on regulatory compliance issues than they did in 2009. A 2012 NAFCU survey of our membership found that 94% of respondents had seen their compliance burdens increase since the passage of the Dodd-Frank Act in 2010. Furthermore, a March 2013 survey of NAFCU members found that nearly 27% had increased their full-time equivalents (FTEs) for compliance personnel in 2013, as compared to 2012. That same survey found that over 70% of respondents have had non-compliance staff members take on compliance-related duties due to the increasing regulatory burden. This essentially means that many non-compliance staff are being forced to take time away from serving members to spend time on compliance issues.

At Bayer Heritage FCU, we have seen our compliance costs double in just the last few years and recently hired a new FTE to help with compliance at a cost of over $65,000 a year. These increased costs mean that we are often slower to offer services that our members want, and there are some services which are "non-starters" for us because of the compliance costs.

The CFPB's 3507 pages of new mortgage regulation released in January is a prime example of the growing compliance burden our nation's credit unions face. While some may argue that the directive aspects of the "rule" itself are far less than 3507 pages, they are getting the wrong impression. In order to fully comprehend the "rule" and its impact, a credit union compliance officer will have to read and digest the full 3500+ pages, which is no small task in itself, on top of handling all other proposals and daily responsibilities that they have. Covering everything from the scope of coverage under the Home Ownership and Equity Protection Act, comprehensive changes to mortgage origination and servicing, amended rules associated with the Truth in Lending Act and Financial Institutions Reform, Recovery, and Enforcement Act, changing requirements for escrow accounts and issuing rules under Dodd-Frank relative to what constitutes a "qualified mortgage"-- the breadth and pace of new requirements are daunting. The less than 12 month timeframe for implementation of the rules should cause serious pause for lawmakers and regulators. Even if all 3507 pages are well intended, there is significant burden to small institutions in just keeping up.

New mortgage regulation aside, the ever-growing regulatory burden on credit unions stems not just from one single onerous regulation, but a compilation and compounding of numerous regulations – one on top of another – stemming from a number of federal regulators. A number of these regulations may be worthwhile and well-intentioned, but they are often issued with little coordination between regulators and without elimination or removal of outdated or unnecessary regulations that remain on the books. It is with this in mind that NAFCU President and CEO Fred Becker wrote then Treasury Secretary Timothy Geithner in his role as Chairman of the Financial Stability Oversight Council (FSOC) in June of 2012. In this letter, NAFCU urged the FSOC to focus on its duty to facilitate regulatory coordination under the Dodd-Frank Act. A copy of this letter is attached to this testimony (Attachment A). We hope the Committee will continue to encourage the FSOC in this regard.

In testimony before this Committee in May of 2012, NAFCU Board Member and witness, Ed Templeton noted that it is not any single regulation, but the panoply of the regulatory regime of numerous regulators, each operating “within their own lanes” and with minimal, if any, interagency coordination, that not only helps create, but also significantly magnifies today’s undue regulatory burden on credit unions and other small financial institutions.

It is important to make clear that the tsunami of regulatory burden is impacting all credit unions and hampering the industry's ability to serve our nation's 94 million credit union members. NAFCU does not believe any relief efforts should bifurcate the industry by asset size and would not support such an approach. Providing broad-based relief will help credit unions of all sizes, especially smaller institutions like Bayer Heritage FCU, as we have limited compliance resources and don't have the economy of scale of larger institutions. All credit unions need regulatory relief and we hope that this Committee can help provide it.

Areas Where Credit Unions Need Regulatory Relief

In early February of this year, NAFCU was the first trade association (not only in our industry, but the entire financial services community) to formally call on the new Congress to adopt a comprehensive set of ideas generated by credit unions that would lead to meaningful and lasting regulatory relief for our industry. As part of that effort, NAFCU sent a five-point plan for regulatory relief to Congress to address some of the most pressing areas where credit unions need relief and assistance (Attachment B). NAFCU and its member credit unions appreciate this opportunity to expand on those ideas and hope today's discussion serves as the basis for legislation that will lead to meaningful and lasting relief for our industry. The five points outlined in our plan include:

Administrative Improvements for the Powers of the NCUA

NAFCU believes that Congress should take steps to strengthen and enhance the National Credit Union Administration (NCUA).

First, the NCUA should have authority to grant parity to a federal credit union on a broader state law, if such a shift would allow them to better serve their members and continue to protect the National Credit Union Share Insurance Fund (NCUSIF). This is a parity issue that will enable federally chartered credit unions to adequately serve their members in instances where a state law is more conducive to the lending needs and environment in that particular state. It is important to note that this does not simply mean that a federal credit union can default to a state law. The NCUA would need to approve any such shift on a case-by-case basis, ensuring that safety and soundness concerns are addressed. It also must be recognized that in many instances a federal rule addressing an issue that has arisen in a particular state or region simply does not exist. Without the ability to instead use the state law, federal credit unions could be hamstrung in trying to serve their member-owners.

Second, the NCUA should have the authority to delay the implementation of a CFPB rule that applies to credit unions, if complying with the proposed timeline would create an undue hardship. Furthermore, given the unique nature of credit unions, the NCUA should have authority to modify a CFPB rule for credit unions, provided that the objectives of the CFPB rule continue to be met. Since the modified rule would be substantially similar to the original rule, and achieve the same goal, the argument that this would undermine the CFPB's intentions is not valid. Granting NCUA this authority would help address one major issue facing the CFPB. Unfortunately, the CFPB has been given the impossible task for writing one rule that will work well for both our nation's largest banks and the smallest credit unions.

An example of where this is necessary is the CFPB's new remittance transfer rule. As part of a regulatory relief package in the 109th Congress (H.R. 3505 / P.L. 109-351), Congress explicitly granted all credit unions the ability to offer remittance services to anyone in their field of membership in an effort to draw the unbanked and under-banked into the system by familiarizing them with credit unions. The CFPB's new rule, since it can't be tailored specifically to credit unions, will likely drive many credit unions out of the remittance business altogether. A January 2013 survey of NAFCU members found that nearly 27% of respondents will likely cease offering remittance services because of the new rule. If NCUA had greater flexibility, this issue may be able to be addressed. The NCUA already has had this type of authority in the past in conjunction with other regulators, and has this authority now with tailoring Truth in Savings to the unique nature of credit unions.

It is worth noting that NAFCU has serious concerns about the remittance transfer rule and has taken every opportunity to educate the CFPB on the position of credit unions and how the new rule will likely impact the marketplace. The overly broad definition of "remittance transfer" used in the rule imposes new requirements on all international electronic transfer of funds services, and not just transmissions of money from immigrants in the U.S. to their families abroad—which are in fact conventional remittances. The new regulatory and disclosure requirements requiring providers to provide senders with detailed disclosures with respect to third party fees and foreign taxes will create obstacles so great that many credit unions are likely to stop offering this service.

Third, the NCUA and the CFPB should be required to conduct a look-back cost-benefit analysis on all new rules after three years. The regulators should be required to revisit and modify any rules for which the cost of complying was underestimated by 20% or more from the original estimate at the time of issuance. Credit unions did not cause the financial crisis yet all credit unions are subject to the same CFPB rules as larger for-profit mega banks. As a result, credit unions find themselves drowning in regulatory burden stemming from the CFPB and NCUA. It should be noted that many credit unions only have one or two people dedicated full-time to compliance issues, yet they have to comply with the same CFPB rules as mega banks thathave an army of lawyers to work on these issues.

There are many instances where the regulator is off base in terms of projecting the compliance cost for credit unions. While some examples may seem insignificant, it is the cumulative effect of layering requirements on top of requirements that creates an environment where a credit union simply cannot keep up. For example, the CFPB recently expanded their survey of credit card plans being offered by financial institutions to include credit unions. The survey purports that the "Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time to gather and maintain data in the required form and to review instructions and complete the information collection." Feedback from NAFCU members indicates that it takes more than 15 minutes just to read the survey instructions, so the idea that the entire process of reviewing and completing the survey could take a total of 15 minutes defies common sense.

In a March 2013 survey of NAFCU members, respondents said that over 55% of compliance cost estimates from the NCUA/CFPB were lower than the credit unions actual cost (That is, the cost was greater than the estimate from the regulator). In the instances where the compliance costs were underestimated, the costs were off by more than 25% over a quarter of the time.

We would also draw your attention to recent cost estimates provided by the CFPB with respect to the periodic statement disclosure requirements under the Bureau's amendments to Regulation Z, which implements the Truth in Lending Act. This final rule is the result of a Dodd-Frank directive regarding mortgage loan servicing. The potential costs to comply with the periodic disclosure requirements as estimated by the CFPB (http://www.federalregister.gov/a/2013-01241/p-950) are radically different than the annual per loan cost estimates provided by various covered entities, including credit unions, during the public comment period for the rule.

Furthermore, the lack of information on these current servicing practices makes it impossible to determine the impact of the rule on the production and distribution of disclosures. Thus, all projections about the likely cost of the rule should be considered flawed. This type of confusion exemplifies how important it is for CFPB rulemaking to be clear and concise. Clear directives will facilitate more accurate cost-estimates and benefit all parties involved. The goal of this provision is to create a truth in compliance burden estimation not only so credit unions are able to properly plan in allocating staff hours and resources, but also to foster a better understanding between credit unions and their regulators in terms of how various rules and regulations are implemented in practice.

Fourth, new examination fairness provisions should be enacted to help ensure timeliness, clear guidance and an independent appeal process free of examiner retaliation. NAFCU supported the bipartisan "*Financial Institutions Examination Fairness and Reform Act*" *(H.R. 3461)* introduced last Congress by Chairman Capito and Rep. Carolyn Maloney and is hopeful that the issues that this bill sought to address are given consideration moving forward. Credit unions must have adequate notice of and proper guidance for exams, the right to appeal to an independent administrative law judge during the appeal process, and be assured that they are protected from examiner retaliation.

Finally, the Central Liquidity Facility (CLF) should be modernized with changes such as: (1) removing the subscription requirement for membership, and (2) permanently removing the CLF borrowing cap so that it may meet the current needs of the industry.

Capital Reforms for Credit Unions

NAFCU believes that capital standards for credit unions should be modernized to reflect the realities of the 21st century financial marketplace.

First, the NCUA should, with input from the industry, study and report to Congress on the problems with the current prompt corrective action (PCA) system and recommended changes.

Second, a risk-based capital system for credit unions that more accurately reflects a credit union's risk profile should be authorized by Congress. We ask that Congress amend current law to make all credit unions subject to risk-based capital standards, and direct the National Credit Union Administration (NCUA) to consider risk standards comparable to those of FDIC-insured institutions when drafting risk-based requirements for credit unions. Credit unions need this flexibility to determine their own risk and to leverage all their resources to provide the best financial services possible to their membership.

Third, the NCUA should be given the authority to allow supplemental capital accounts for credit unions that meet certain standards. NAFCU applauds Reps. Peter King and Brad Sherman for introducing bipartisan legislation, the *Capital Access for Small Businesses and Jobs Act (*H.R. 719), that would improve the ability of credit unions to serve their members by enhancing their ability to react to market conditions and meet member demands. We would urge the Committee to act on this legislation. Under current law, a credit union's net worth ratio is determined solely on the basis of retained earnings as a percentage of total assets. Because retained earnings often cannot keep pace with asset growth, otherwise healthy growth can dilute a credit union's regulatory capital ratio and trigger nondiscretionary supervisory actions under prompt corrective action (PCA) rules. Allowing credit unions access to supplemental capital would help address this issue.

Finally, given that very few new credit unions have been chartered over the past decade, and in order to encourage the chartering of new credit unions, the NCUA should be authorized to further establish special capital requirements for newly chartered federal credit unions that recognize the unique nature and challenges of starting a new credit union.

Structural Improvements for Credit Unions

NAFCU believes there should be improvements to the *Federal Credit Union Act* to help enhance the federal credit union charter.

First, Congress should direct the NCUA, with input from the industry, to study and report back to Congress suggested changes to outdated corporate governance provisions in the Federal Credit Union Act as several parts haven't been updated to reflect modern day corporate governance since the advent of credit unions and the Act in 1934. Congress, upon receiving the report, should ensure this mundane yet important issue receives the consideration it deserves. For example, the FCUA currently requires a two-thirds vote to expel a member who is disruptive to the operations of the credit union, at a special meeting at which the member in question himself has the right to vote. NAFCU does not believe that this is in line with good governance practices, and feels that the FCUA should be amended to provide federal credit union boards flexibility to expel members based on just cause (such as illegal behavior, harassment or safety concerns). Given more flexibility in statute, the NCUA would be able to work with credit unions on a case-by-case on a number of different issues pertaining to corporate governance.

Second, a series of improvements should be made to the field of membership (FOM) restrictions that credit unions face. This should include expanding the criteria for defining “urban” and “rural” for FOM purposes and also allowing federal credit unions that convert to community charters to retain their current select employee groups (SEGs).

Finally, Congress should clarify that all credit unions, regardless of charter type, should be allowed to add underserved areas to their field of membership.

Operational Improvements for Credit Unions

Credit unions stand willing and ready to assist in our nation's economic recovery. Our industry's ability to do so, however, is severely inhibited by antiquated legislative restrictions.

First, Congress should show America that they are serious about creating jobs by modifying the arbitrary and outdated credit union member business lending (MBL) cap. This can be done by raising the current 12.25% limit to 27.5% for credit unions that meet certain criteria. We are pleased to see legislation introduced in the form of H.R. 688, the *Credit Union Small Business Jobs Creation Act*, by Representatives Ed Royce (R-CA) and Carolyn McCarthy (D-NY) which would do just that. We would urge the committee to support and take action on this legislation.

If the Committee cannot move forward on H.R. 688, we would suggest raising the outdated "definition" of a MBL from last century's $50,000 to a new 21st century standard of $250,000, with indexing for inflation to prevent future erosion. Furthermore, MBLs made to non-profit religious organizations, made for certain residential mortgages (such as non-owner occupied 1-4 family residential mortgages), made to businesses in "underserved areas" or made to small businesses with fewer than 20 employees should be given special exemptions from the arbitrary cap.

Second, requirements to mail redundant and unnecessary privacy notices on an annual basis should be removed, provided that the credit union's policy has not changed and additional sharing of information with outside entities has not been undertaken since the distribution of the previous notice. At Bayer Heritage FCU, unnecessary notices cost our institution several thousand dollars a year. NAFCU appreciates the work of Reps. Blaine Luetkemeyer (R-MO) and Brad Sherman (D-CA) in introducing the *Eliminate Privacy Notice Confusion Act* (H.R. 749) to address this issue. As you know, this bill passed the House under suspension of the rules on March 12. We thank the House for its support and are pleased to see that similar legislation has been introduced in the Senate in the form of S. 635.

Third, credit unions should be given greater authority and flexibility in choosing their investments, such as: allowing credit unions to invest in investment grade securities up to 10% of assets; granting credit unions the ability to purchase mortgage servicing rights for investment purposes; and raising the investment limit in Credit Union Service Organizations (CUSOs). These small steps would allow credit unions to better balance and manage their investment options.

Fourth, the NCUA should be given greater flexibility in how it handles credit union lending, such as the ability to establish longer maturities for certain loans. Currently, most loans are statutorily capped at 15-year maturities. Allowing the NCUA to grant longer maturities for certain types of loans will allow credit unions to better offer the loan products that their members desire.

Fifth, Congress should clarify that Interest on Lawyers Trust Accounts (IOLTAs) at credit unions are fully insured. To the extent the FDIC is required to fully insure IOLTA accounts, it is essential for the NCUA's share insurance fund to be treated identically in order to maintain parity between the two federal insurance programs. Congress passed a change to the Dodd-Frank law to clarify the FDIC's ability in this area, but failed to provide parity to credit unions in its last minute action. We urge Congress to correct this mistake and ensure continued parity. The Federal Credit Union Act states that funds held at a credit union are not protected by the share insurance fund unless the person or persons the funds belong to are also members of the credit union. Furthermore, many states require funds held by an attorney for clients to be held in accounts with federal insurance. In addition, IOLTA accounts often contain funds from many clients, some of whom may have funds in excess of the standard $250,000 share insurance limit. IOLTA funds are constantly withdrawn and replenished with new funds from existing and new clients. Accordingly, it is impractical to require attorneys to establish multiple IOLTAs in different credit unions to ensure full share insurance coverage.

Lastly, Congress should make sure that the NCUA has practical requirements on how credit unions provide notice of their federally-insured status in any advertising.

21st Century Data Security Standards

Credit unions are being adversely impacted by ongoing cyber-attacks against the United States and continued data breaches at numerous merchants. The cost of dealing with these issues hinders the ability of credit unions to serve their members. It should be noted that these breaches are often not just the national breaches that make the evening news, but often are localized breaches that can have a devastating impact on a credit union and its members. A 2011 NAFCU survey of our membership found that these local breaches are often the most costly breaches to an institution. These breaches have led to increased costs to credit unions such as higher insurance costs, higher software costs, higher security costs, higher card reissuance costs and higher staffing costs to deal with data breaches.

Congress needs to enact new 21st century data security standards that include:

- the payment of costs associated with a data breach by those entities that were breached;
- establishing national standards for the safekeeping of all financial information;
- requiring merchants to disclose their data security policies to their customers;
- requiring the timely disclosure of entities that have suffered a data breach;
- establishing enforcement standards for provisions prohibiting merchants from retaining financial data;
- requiring the timely notification of the account servicer if an account has been compromised by a data breach; and,
- requiring breached entities to prove a "lack-of-fault" if they have suffered from a data breach.

Additional Areas Where Relief is Needed

In addition to the five major areas outlined above, there are other areas where Congress should act to provide relief for credit unions and other financial institutions:

- Dodd-Frank Act Thresholds: The thresholds established in the Dodd-Frank Act should be raised and indexed. The Act established $10 billion as an arbitrary threshold for financial institutions being subject to the Durbin interchange price cap and the examination and enforcement of the CFPB. We believe that raising such a threshold would still accomplish the same objectives, while not penalizing the number of "good actors" that have found themselves above the arbitrary $10 billion line but below mega-bank status. At the very least, the $10 billion line should be indexed for inflation on an annual basis – going back retroactively to its establishment.

- E-SIGN Act: Passed in 2000, the E-SIGN Act requires financial institutions to receive consumer consent *electronically* before electronic disclosures can be sent to members. Credit unions cannot accept their member's consent to receive e-statements over the phone or in person, but must instead direct the member to their own personal computers to consent electronically, adding an unnecessary hurdle in this otherwise straightforward process. This outdated provision is a burden for financial institutions and consumers and should be stricken.

- CFPB Document Access: While Dodd-Frank excludes financial institutions with $10 billion or less in assets from the examination authority of the CFPB, the new agency is provided with unlimited access to financial reports concerning covered persons issued by other regulators. Since the reports are drafted by federal agencies as part of their examination procedures, access by the CFPB to the reports essentially amounts to an examination in itself, even for those institutions with assets of $10 billion or less. NAFCU does not believe that this is the result Congress was seeking to achieve, and asks that this broad language be narrowed appropriately.

- Appraiser Independence: Section 1472 of the Dodd-Frank Act imposes mandatory reporting requirements on credit unions and other lenders who believe an appraiser is behaving unethically or violating applicable codes and laws, with heavy monetary penalties for failure to comply. These provisions would impose a significant burden on each credit union to essentially serve as a watchdog for appraisers violating their own professional practices, and should therefore be optional. If reporting continues to be compulsory, NAFCU asks that Congress amend the severe penalties of up to $10,000 or $20,000 per day which we believe to be excessive.

- SAFE Act Definition of "Loan Originator": The S.A.F.E. Mortgage Licensing Act of 2008 required financial institutions to register any "loan originator." While the intent was to record commissioned originators that perform underwriting, regulators have interpreted the definition very broadly to include any employee accepting a loan application, and even call center staff or credit union volunteer board members. NAFCU asks that Congress narrow the meaning of what it means to "take" an application and to "offer" or "negotiate" terms, which would help prevent credit unions from going through a burdensome process to unnecessarily register individuals not involved in underwriting loans.

- <u>SEC Broker-Dealer Exemption</u>: while the Gramm-Leach-Bliley Act allows for an exemption for banks from broker-dealer and investment adviser registration requirements with the SEC, no similar exception for credit unions is included, even though federal credit unions are permitted to engage in securities-related activities under the FCUA as regulated by NCUA. We ask that credit unions be treated similarly to banks under these securities laws. This would ensure they are not dissuaded from providing services that consumers demand, thereby putting their members at a disadvantage.

<u>Conclusion</u>

Credit unions are suffering under an ever-increasing regulatory burden. This burden is hampering their ability to serve our nation's 94 million credit union members. A NAFCU survey of our members indicates that 94% of respondents have seen this burden increase since the passage of the Dodd-Frank Act in 2010 – despite the fact that everyone agreed during the financial reform debate that credit unions were good actors and did not cause the crisis. This is why during the debate on Wall Street reform that NAFCU did not support credit unions being included under the CFPB rulemaking and why we still have concerns about them being subject to it today.

It is not one single regulation that is creating this burden, rather the tidal wave of new rules and regulations coming from multiple regulators – often with little or no coordination between them. The burden is compounded as old and outdated regulations are not being removed or modernized at the same pace. This regulatory tsunami has caused all credit unions to need regulatory relief and any relief effort should include all credit unions and not attempt to split the industry.

NAFCU was the first to call on Congress to provide such relief this past February and our five-point plan, outlined in my testimony, provides a good road map to start on any relief package for credit unions.

NAFCU could also support such a package being combined with regulatory relief for community banks, as we believe the regulatory burden is high for all regulated depository institutions. It is important that such a joint effort be balanced between the top needs of both the credit union and the banking industry to create a "win-win" scenario for all.

NAFCU looks forward to working with the Committee on this approach. We thank you for your time and the opportunity to testify before you here today on these important issues to credit unions and ultimately our nation's economy. I welcome any questions you may have.

Attachment A:	**NAFCU letter to Secretary Geithner on FSOC's role to reduce regulatory compliance burden; June 27, 2012.**
Attachment B:	**NAFCU letter to Chairman Johnson, Chairman Hensarling, Ranking Member Crapo and Ranking Member Waters calling on Congress to provide credit union regulatory relief; February 12, 2013.**

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Fred R. Becker, Jr.
President and CEO

June 27, 2012

The Honorable Timothy F. Geithner
Secretary of the Treasury
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

RE: FSOC's Role to Reduce Regulatory Compliance Burden on Credit Unions

Dear ~~Secretary Geithner:~~ Secretary Geithner

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's Federal credit unions (FCUs), I am writing to you in your capacity as Chairman of the Financial Stability Oversight Council (FSOC).

As you know, under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act), the FSOC has a duty to facilitate regulatory coordination. This duty includes facilitating information sharing and coordination among the member agencies of domestic financial services policy development, rulemaking, examinations, reporting requirements and enforcement actions. Through this role, the FSOC is effectively charged with ameliorating weaknesses within the regulatory structure, promoting a safer and a more stable system.

In regards to this goal, NAFCU would like to emphasize how important it is to credit unions for our industry's copious regulators to coordinate with each other to help mitigate regulatory burden. As highlighted in the testimony of NAFCU Board Member Ed Templeton before the House Financial Services Committee on May 9, 2012, it is not any single regulation, but the panoply of the regulatory regime of numerous regulators, each operating "within their own lanes" and with minimal, if any, interagency coordination, that not only helps create, but significantly magnifies, today's undue regulatory burden on credit unions and other small financial institutions.

In his testimony, Mr. Templeton, CEO of a small credit union that serves a large number of underserved Americans, emphasized the difficulties facing credit unions to plan ahead and keep pace with the rapid rate of regulatory changes under the Act. As Mr. Templeton testified, 96.4% of credit unions in a NAFCU survey last spring reported that they were devoting more staff time to regulatory compliance than they did in 2008. Consequently, credit unions have not been able to use their resources efficiently as they are devoting far too much time and money on regulatory compliance and related functions; they should be empowered, instead, to expend such time and resources to serving their members.

The array of regulations that are making operating a credit union more and more difficult are being fired simultaneously from multiple directions and by a host of agencies. For example, the Consumer Financial Protection Bureau (CFPB) has issued several rules and is soon expected to propose numerous major rules that would greatly impact credit unions' products and services, including savings, mortgage lending, and credit and debit card services. Concomitantly, the credit union's principle regulator, the National Credit Union Administration (NCUA), is issuing regulations on issues such as concentration and interest rate risk, loan participations, credit union service organizations and appraisal management. At the same time, the Department of Justice is issuing regulations on physical assess to ATMs, while the Department of Labor is issuing regulations on employee rights and the Financial Crimes Enforcement Network (FinCEN) is issuing regulations on currency transaction reports and suspicious activity reports.

As we have approached each agency regarding the ever-increasing regulatory burden, they quickly respond that the rules being issued by other agencies are outside of their purview. NAFCU believes the FSOC is well-positioned to rectify this lack of coordination. In that regard, we ask that you establish within the FSOC robust inter-agency coordination on the issuance of rules impacting financial institutions.

NAFCU also urges the FSOC to establish policy requiring member agencies to conduct and publish a thorough cost-benefit analysis prior to issuing regulations as well as a separate cost-benefit analysis a year after each regulation the agency prescribes and every other year thereafter. Also, a cost-benefit analysis should be conducted every two years on each regulation that an agency has on its books, with the agency required to justify the regulations' continued existence. These cost analyses should be reviewed by the FSOC to assess the total impact on the financial services industry. We strongly believe that conducting such exercises would better instruct regulators of the high cost of compliance, and equip them with the information necessary to assess whether a particular regulation is effective and justifiable.

America's credit unions have long been reliable sources of financial advancement for millions of people. We believe that the FSOC, with your leadership, is in a position to help credit unions and other small financial institutions continue to achieve their mission of serving their members.

NAFCU appreciates your attention to our concerns. Should you have any questions or concerns, please feel free to contact me or Carrie Hunt, NAFCU's General Counsel and Vice President of Regulatory Affairs, at 703-842-2234.

Sincerely,

Fred R. Becker, Jr.
President/CEO

cc: Members of the Senate Banking Committee
Members of the House Financial Services Committee
The Honorable Ben Bernanke, chairman of the Federal Reserve Board
Martin J. Gruenberg, acting chairman of the Federal Deposit Insurance Corporation
The Honorable Richard Cordray, director of the Consumer Financial Protection Bureau
Edward DeMarco, acting director of the Federal Housing Finance Agency
The Honorable Debbie Matz, chairman of the National Credit Union Administration
The Honorable Karen Mills, administrator of the Small Business Administration
The Honorable Hilda Solis, secretary of the Department of Labor
The Honorable Shaun Donovan, secretary the Department of Housing and Urban Development
James H. Freis, Jr., director, Financial Crimes Enforcement Network
The Honorable Julius Genachowski, chairman of the Federal Communications Commission
The Honorable Jon Leibowitz, chairman of the Federal Trade Commission

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Fred R. Becker, Jr.
President/CEO

February 12, 2013

The Honorable Tim Johnson
Chairman
Senate Committee on Banking,
Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

The Honorable Michael Crapo
Ranking Member
Senate Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, D.C. 20510

The Honorable Jeb Hensarling
Chairman
House Financial Services Committee
United States House of Representatives
Washington, D.C. 20515

The Honorable Maxine Waters
Ranking Member
House Financial Services Committee
United States House of Representatives
Washington, D.C. 20515

Re: NAFCU Calls on Congress to Provide Regulatory Relief for Credit Unions

Dear Chairman Johnson, Chairman Hensarling, Ranking Member Crapo and Ranking Member Waters:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions, I write today to call for Congressional action during this session of the 113th Congress to enact broad-based regulatory relief that is essential to the credit union industry's ability to serve its 95 million members.

Our nation's credit unions are struggling under an ever-increasing regulatory burden that must be immediately addressed. A survey of NAFCU members late last year found that 94% have seen their regulatory burden increase since the passage of the *Dodd-Frank Act* in July 2010. The regulatory onslaught continues to compound as credit unions now have over 5,000 pages of rules from the Consumer Financial Protection Bureau (CFPB) that they must understand, interpret, and ultimately comply with – despite the fact that Congress has widely acknowledged that credit unions were not the cause of the financial crisis. Credit unions, many of which have very small compliance departments, and in some cases only one compliance officer, must comply with the same rules and regulations as our nation's largest financial institutions that employ armies of lawyers. The impact of the ever-increasing regulatory burden is even more sobering, as the number of credit unions continues to decline. There are nearly 700 fewer credit unions today than there were before the passage of the *Dodd-Frank Act.*

It is with this regulatory onslaught in mind that we call on Congress to enact meaningful regulatory reforms and provide much needed assistance to our nation's credit unions. Over the past year, we have been actively conversing with our member credit unions to identify those areas where regulatory relief is requisite.

Our ongoing discussions with our members have led us to draft a five point plan for credit union regulatory relief:

I. Administrative Improvements for the Powers of the NCUA

We believe there are changes that must be made to strengthen and enhance the National Credit Union Administration (NCUA).

First, the NCUA should have authority to grant parity to a federal credit union on a broader state rule, if such a shift would allow them to better serve their members and continue to protect the National Credit Union Share Insurance Fund.

Second, the NCUA should have the authority to delay the implementation of a CFPB rule that applies to credit unions, if complying with the proposed timeline would create an undue hardship. Furthermore, given the unique nature of credit unions, the NCUA should have authority to modify a CFPB rule for credit unions, provided that the objectives of the CFPB rule continue to be met.

Third, the NCUA and the CFPB should be required to conduct a look-back cost-benefit analysis on all new rules after three years. The regulators should be required to revisit and modify any rules for which the cost of complying was underestimated by 20% or more from the original estimate at the time of issuance.

Fourth, new examination fairness provisions should be enacted to help ensure timeliness, clear guidance and an independent appeal process free of examiner retaliation.

Finally, the Central Liquidity Facility (CLF) should be modernized with changes such as: (1) removing the subscription requirement for membership, and (2) permanently removing the CLF borrowing cap so that it may meet the current needs of the industry.

II. Capital Reforms for Credit Unions

NAFCU believes that capital standards for credit unions should be modernized to reflect the realities of the 21st century financial marketplace.

First, the NCUA should, with input from the industry, study and report to Congress on the problems with the current prompt corrective action (PCA) system and recommended changes.

Second, a risk-based capital system for credit unions that more accurately reflects a credit union's risk profile should be authorized by Congress.

Third, the NCUA should be given the authority to allow supplemental capital accounts for credit unions that meet certain standards.

Finally, given that very few new credit unions have been chartered over the past decade, and in order to encourage the chartering of new credit unions, the NCUA should be authorized to further establish special capital requirements for newly chartered federal credit unions that recognize the unique nature and challenges of starting a new credit union.

III. Structural Improvements for Credit Unions

NAFCU believes there should be improvements to the *Federal Credit Union Act* to help enhance the federal credit union charter.

First, Congress should direct the NCUA, with input from the industry, to study and report back to Congress suggested changes to outdated corporate governance provisions in the *Federal Credit Union Act*. Congress should then act upon those recommendations.

Second, a series of improvements should be made to the field of membership (FOM) restrictions that credit unions face expanding the criteria for defining "urban" and "rural"; and allowing voluntary mergers involving multiple common bond credit unions and allowing credit unions that convert to community charters to retain their current select employee groups (SEGs).

Finally, all credit unions, regardless of charter type, should be allowed to add underserved areas to their field of membership.

IV. Operational Improvements for Credit Unions

Credit unions stand willing and ready to assist in our nation's economic recovery. Our industry's ability to do so, however, is severely inhibited by antiquated legislative restrictions.

First, Congress should show America that they are serious about creating jobs by modifying the arbitrary and outdated credit union member business lending (MBL) cap. This can be done by raising the current 12.25% limit to 27.5% for credit unions that meet certain criteria or by raising the outdated "definition" of a MBL from last century's $50,000 to a new 21st century standard of $250,000, with indexing for inflation to prevent future erosion. Furthermore, MBLs made to non-profit religious organizations, businesses in "underserved areas", or small businesses with fewer than 20 employees should be given special exemptions for the arbitrary cap.

Second, requirements to mail redundant and unnecessary privacy notices on an annual basis should be removed, provided that the credit union's policy has not changed and additional sharing of information with outside entities has not been undertaken since the distribution of the previous notice.

Third, credit unions should be given greater authority and flexibility in choosing their investments.

Fourth, the NCUA should be given greater flexibility in how it handles credit union lending, such as the ability to establish longer maturities for certain loans.

Finally, Congress should clarify that Interest on Lawyers Trust Accounts (IOLTAs) at credit unions are fully insured and also that the NCUA should have practical requirements on how credit unions provide notice of their federally-insured status in any advertising.

V. 21st Century Data Security Standards

Credit unions are being adversely impacted by ongoing cyber-attacks against the United States and continued data breaches at numerous merchants. The cost of dealing with these issues hinders the ability of credit unions to serve their members. Congress needs to enact new 21st century data security standards that include: the payment of costs associated with a data breach by those entities that were breached; establishing national standards for the safekeeping of all financial information; require merchants to disclose their data security policies to their customers; requiring the timely disclosure of entities that have suffered a data breach; establishing enforcement standards for provisions prohibiting merchants from retaining financial data; requiring the timely notification of the account servicer if an account has been compromised by a data breach; and, requiring breached entities to prove a "lack-of-fault" if they have suffered from a data breach.

We have outlined a number of proposals that are necessary to providing the regulatory relief and assistance that credit unions urgently require. The number of credit unions continues to decline on a monthly basis and the ever-increasing regulatory burden the industry is facing is accelerating that decline as compliance costs become even more onerous. It is with that in mind that we call on Congress to act on any and all of these proposals, whether as a comprehensive package, or individually. Our nation's credit unions and their 95 million members desperately need this relief and we call on Congress to enact it.

Thank you for your attention to this important matter.

If you have any questions or would like further information about any of these issues, please do not hesitate to contact me or NAFCU's Executive Vice President of Government Affairs Dan Berger by telephone at (703) 842-2203 or by e-mail at dberger@nafcu.org.

Sincerely,

Fred R. Becker, Jr.
President and CEO

cc: Members of the Senate Banking Committee
Members of the House Financial Services Committee