

**Testimony**  
**House Committee on Financial Services**  
**Subcommittee on Financial Institutions and Consumer Credit**

**“An Examination of the Challenges Facing Community Financial Institutions in Ohio”**

**April 16, 2012 – 10:00 a.m.**

**Carl B. Stokes U.S. Courthouse – Cleveland, Ohio**

**Stan Barnes, President and Chief Executive Officer, CSE Federal Credit Union**

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Chairman Capito, Ranking Member Maloney, and Members of the Subcommittee:

Thank you for this opportunity to represent Ohio’s 377 credit unions and 3 million credit union members, and to share with you, on their behalf, the difficult circumstances facing community-based credit unions in the form of over-burdensome regulation and examination transparency, and to update you on the current and future role of the Credit Union Movement.

My name is Stan Barnes, and I am President and Chief Executive Officer of CSE Federal Credit Union in Canton, Ohio. CSE is a \$150 million financial cooperative, proudly serving 30,000 members in Northeast Ohio. And like every credit union, we do so under the business philosophy of “Not for profit, not for charity, but for service.”

**Regulatory Burden**

***Regulatory burden and the required cost of compliance is the number one concern among Ohio credit unions.***

Attached to my testimony (***Exhibit A***) are the federal regulatory requirements of both banks and credit unions, which should put into some perspective the time, effort, and costs tied to compliance. In many cases, when credit unions should be dedicating their resources to the financial livelihood and betterment of their members, they are instead challenged with the increasing burden of following far-reaching rules and regulations.

These regulations are particularly onerous on smaller-asset credit unions, which are subject to the same regulations, but struggle to adhere to these guidelines due to thin operating margins. In fact, the vast majority of Ohio credit unions (65%) are small credit unions (under \$35 million in assets).

To give you a sense of the increasing regulatory burden, since 2008, Ohio credit unions have been subjected to more than 160 new rules and regulations from 27 different federal agencies. Additionally, there are at least 27 rulemaking proposals pending at various agencies, including the National Credit Union Administration (NCUA), the Federal Reserve, the Consumer Financial Protection Bureau (CFPB), the Department of Housing and Urban Development, the Federal Housing Finance Agency, the Financial

Accounting Standards Board, the Internal Revenue Service, the Department of Treasury's FinCEN, and the Federal Trade Commission - - among others.

Unfortunately, even though natural person credit unions did not cause the financial crisis, they have been subjected to a flood of regulations that create an unnecessary burden without any measure of the effectiveness of these changes.

### **Examination Standards and Inconsistencies**

***The experience of the majority of Ohio credit unions is that the high standard of transparency and accountability expected of financial institutions is underwhelmingly practiced by the National Credit Union Administration during the examination process.***

Credit unions have voiced to the NCUA that their examiners are practicing regulatory micromanagement and overreach. Quite simply, regulators are dictating the business of operating a credit union. It is important that examiners not over-regulate or exceed their authority and substitute its judgment for that of the volunteers and executives in the governance, management, and operations of credit unions. While the relationship I have with my examiner is transparent, professional, and rooted in mutual respect, colleagues of mine have experienced the opposite.

I urge the committee to consider improvements in the examination process. H.R. 3461, sponsored by Chairman Capito and Ranking Member Maloney, addresses the examination process and would be a positive step in balancing the relationship between the regulated and the regulator. It also provides for a more transparent and consistent examination process. I know the Credit Union National Association, of which CSE Federal Credit Union is a member, supports the legislation, and is working closely with the NCUA to incorporate examination enhancements and transparency.

CUNA has also urged the NCUA to take several steps to improve the regulatory process and relieve credit unions' regulatory burden. I have submitted a copy of a letter from CUNA to NCUA Chairman Debbie Matz (**Exhibit B**) that recommends immediate actions to relieve overwhelmed credit unions.

Credit unions have called on the NCUA to impose a moratorium on new regulations for at least the next six months; and, have suggested the agency reinstate the Regulatory Flexibility Program, which provides well-managed and well-capitalized credit unions an exemption from regulations that are not statutorily required.

### **Role of Credit Unions in the State and the Future of Credit Unions as Community Financial Institutions**

***Despite the issues caused by regulatory overreach and examination transparency, I am proud to say that credit unions continue to serve their members with responsible and affordable financial products and services.***

Over the years, credit unions have grown considerably and play an important role in the local community.

In fact, research by the Credit Union National Association finds that credit unions save Ohio members \$132 million annually by offering better priced, conservatively managed products and services. The not-for-profit cooperative model is working, and in my opinion is best suited to meet the needs of all Ohioans. I have submitted as part of my written testimony (**Exhibit C**) examples of the credit union difference in action and how credit unions are helping Ohioans in today's economy through financial education (**Exhibit D**).

But credit unions can do more. With common-sense legislation that would essentially double the arbitrary cap on credit union small business lending, credit unions can infuse \$13 billion in new capital to small businesses and help create up to 140,000 jobs. We ask for your support of S. 2231 and H.R. 1418.

Similarly, H.R. 3993 would allow well-capitalized credit unions to receive Supplemental Capital, a much-needed financial resource as credit unions face a difficult revenue-building environment and increased pressure to perform by regulators. Again, we ask for your support of this measure.

### **Conclusion**

We look forward to continuing to work with Congress to resolve issues facing community-based financial institutions, and ask that as you consider legislation in this arena, you regularly consult credit unions in your districts. We want to be a solution to the economic issues facing our state and country, and we are here to help.

Thank you for the opportunity to present to you this morning, and I am happy to answer any questions you may have.

# EXHIBIT A

# Bank and Credit Union

## FEDERAL REGULATORY REQUIREMENTS

Regulatory burden and the required cost of compliance are among Ohio credit unions' greatest concerns. As the chart below indicates, credit unions must meet federal regulatory requirements equal to banks from a long list of federal agencies.



### General Regulations for Financial Institutions

Issuing Agencies: National Credit Union Administration, Consumer Financial Protection Bureau (CFPB), Federal Reserve Board (FRB), Federal Trade Commission, U.S. Department of Housing and Urban Development, U.S. Department of Treasury

Regulation	Banks	Credit Unions
Regulation B - Equal Credit Opportunity	Yes	Yes
Regulation C - Home Mortgage Disclosure	Yes	Yes
Regulation D - Alternative Mortgage Disclosure (CFPB)	Yes	Yes
Regulation D - Reserve Requirements (FRB)	Yes	Yes
Regulation E - Electronic Funds Transfer	Yes	Yes
Regulation F - Fair Debt Collection Practices	Yes	Yes
Regulation G - SAFE Act	Yes	Yes
Regulation I - Depository Inst. Lacking Federal Deposit Insurance	Yes	Yes
Regulation J - Collection of checks (CFPB)	Yes	Yes
Regulation J - Interbank Liabilities	Yes	Yes
Regulation M - Consumer Leasing	Yes	Yes
Regulation N - Mortgage Acts and Practices	Yes	Yes
Regulation O - Mortgage Assistance Relief Services	Yes	Yes
Regulation P - Privacy of Consumer Financial Information	Yes	Yes
Regulation U - Margin Loans	Yes	Yes
Regulation X - Real Estate Settlements/Escrow	Yes	Yes
Regulation Z - Truth in Lending	Yes	Yes
Regulation CC - Expedited Funds Availability	Yes	Yes
Regulation DD - Truth in Savings	Yes	Yes
Regulation GG - Unlawful Internet Gambling Act	Yes	Yes
Regulation II - Interchange fees and routing	Yes	Yes
Advertising rules - Federal and state	Yes	Yes
Check Collection thru Fed	Yes	Yes
Community Reinvestment	Yes	No
Credit Practices	Yes	Yes
Credit on Securities	Yes	Yes
Children's Online Privacy Protection Act	Yes	Yes
Discount Window Access	Yes	Yes
Fair and Accurate Credit Transactions Act	Yes	Yes
Fair Housing Act (FHA)	Yes	Yes

### WHAT'S MORE:

Credit unions face a number of disadvantages that aren't outweighed by their tax status. The disadvantages listed have nothing to do with safety and soundness issues, simply out-dated law.

### Credit Union DISADVANTAGES

- Restricted membership eligibility & market reach
- Capital formation limited to retained earnings only
- Capped lending to small member businesses
- Tightly restricted investment opportunities for liquid funds

Credit unions are exempt from some taxes

### Credit Union ADVANTAGES

### INTERESTING FACT:

The government-estimated \$600 million tax expenditure (credit union tax exemption) in 2010 provided **\$10 billion in direct financial benefits to consumers**, through better rates, fewer and lower fees, and more.



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UNION LEAGUE

10 W. Broad Street  
Suite 1100  
Columbus, OH 43215  
(800) 486-2917  
www.OhioCreditUnions.org  
Created March 2012

FHLB Membership	Yes	Yes
Field of Membership	No	Yes
Holder-in-Due Course	Yes	Yes
International Banking Operations	Yes	Yes
Loan to Officials	Yes	Yes
Management Official Interlocks	Yes	Yes
Netting Eligibility	Yes	Yes
Private Mortgage Insurance	Yes	Yes
Permissible Investment Activities	Yes	Yes
Reclamations	Yes	Yes
Record Retention	Yes	Yes
Right to Financial Privacy Act	Yes	Yes
State Fiduciary/Trust Requirements	Yes	Yes

### Tax Reporting Regulations

Issuing Agency: Internal Revenue Service

Regulation	Banks	CUs
Backup Withholding and Depositing	Yes	Yes
Tax Filing	Yes	Yes
Individual Retirement Accounts	Yes	Yes
IRS Form 1098 and 1099	Yes	Yes
IRS Form 990	Yes	Yes
IRS Levies and Summons	Yes	Yes
Magnetic Media Reporting	Yes	Yes
Mortgage Interest Reporting	Yes	Yes
Original Issue Discount	Yes	Yes
Real Estate Transactions	Yes	Yes
Unrelated Business Income Tax (UBIT)	Yes	Yes

### Other Federal Regulations

Regulation	Banks	CUs
Access to Capital	Yes	Yes
ACH/Electronic Payment Standards	Yes	Yes
Affirmative Action	Yes	Yes
Allowance for Loan and leases (ALLL)	Yes	Yes
Americans with Disabilities Act (ADA)	Yes	Yes
Appraisals	Yes	Yes
Anti-Discrimination Data Collection	Yes	Yes
Bankruptcy	Yes	Yes
Bank Secrecy Act	Yes	Yes
Bank Bribery Act	Yes	Yes
Child Support Data Matching	Yes	Yes

Consolidated Omnibus Budget Reconciliation Act (COBRA)	Yes	Yes
Criminal Referral Report	Yes	Yes
Currency Transaction Report	Yes	Yes
Defense Dept. Operating Rules	Yes	Yes
Employee Tax Withholding Rules	Yes	Yes
Employment Practices Records	Yes	Yes
Environmental Lender Liability	Yes	Yes
Equal Employment Opportunities	Yes	Yes
Employee Retirement Income Security Act (ERISA)	Yes	Yes
Fair Labor Standards Act (FLSA)	Yes	Yes
Family and Medical Leave (FMLA)	Yes	Yes
Fed Payments via ACH	Yes	Yes
Federal Financial Institutions Examination Council (FFIEC)	Yes	Yes
Generally Accepted Accounting Principles (GAAP)	Yes	Yes
Guarantee Student Loans	Yes	Yes
Identity Theft	Yes	Yes
Information Security Program	Yes	Yes
Member Business Lending Rules	No	Yes
Minimum Wage/Overtime Rules	Yes	Yes
Occupational Safety and Health Administration (OSHA)	Yes	Yes
Office of Foreign Assets Control (OFAC)	Yes	Yes
Patient Protection and Affordable Care Act (PPACA)	Yes	Yes
Polygraph Protection	Yes	Yes
Prompt Corrective Action	Yes	Yes
Signature Guarantees Standards	Yes	Yes
SBA Small Business Loans	Yes	Yes
Servicemembers Civil Relief Act (SCRA)	Yes	Yes
Tax and Loan Accounts	Yes	Yes
Uniformed Services Employment & Reemployment Rights Act	Yes	Yes
Whistle Blower Laws	Yes	Yes

# EXHIBIT B



Credit Union National Association

cuna.org

**BILL CHENEY**  
President & CEO

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October 25, 2011

The Honorable Debbie Matz  
Chairman  
National Credit Union Administration Board  
1775 Duke Street  
Alexandria, VA 22314

Dear Chairman Matz:

As we have discussed on numerous occasions with you, other Board members, and senior staff at the National Credit Union Administration, regulatory burdens are at the top of virtually every credit union's list of operational concerns. Credit unions are simply overwhelmed by the regulatory requirements under which they currently operate and are quite concerned about any new requirements they may have to manage, including those from NCUA, the new Consumer Financial Protection Bureau, the Federal Reserve Board and other agencies. Having to devote so many resources to regulatory requirements diverts credit unions from serving their members, managing their operations, being able to identify additional ways to meet members' financial needs, and planning for the future.

## I. Introduction

### A. Development of CUNA's List of Recommendations

In light of credit unions' growing anxieties about their regulatory burdens, the Credit Union National Association has assembled a list of rules and agency actions we believe NCUA should address that would provide meaningful relief to credit unions without undermining, either individually or collectively, the agency's primary function of overseeing credit unions' safety and soundness. By way of background, CUNA is the largest advocacy organization in this country for credit unions. We represent about 90% of the nation's 7,200 state and federal credit unions, which in turn serve approximately 93 million members.

The recommendations in this letter were developed based on issues raised by credit union officials, league staff, and members of CUNA subcommittees, committees and other leadership groups, including our councils. CUNA also surveyed credit unions on the issue of regulatory burdens, and this letter reflects those responses as well.

We recognize that many regulations simply implement provisions created by Congress. We are working with Congress to recognize credit unions' regulatory burdens and to advance legislative measures that will minimize regulatory burdens.





## B. NCUA's Efforts to Contain Regulatory Burdens

Before addressing CUNA's recommendations, I want to acknowledge your Regulatory Modernization Initiative. Elements of the initiative include the agency's strong and continuing support for legislation to raise the ceiling on member business lending and to allow credit unions to include supplemental capital in their net worth. We also support legislation to allow any federal credit union to include one or more underserved areas within its field of membership as NCUA Executive Director Dave Marquis urged during his testimony September 22, 2011 before the House Financial Services Subcommittee on Financial Institutions and Consumer Credit. Agency efforts to facilitate the process for more credit unions to be designated as "low income" are also commendable.

There are other steps the agency has undertaken to address credit unions' regulatory burdens that should be recognized. These include:

- Efforts to reconsider the proposal on credit union service organizations (CUSOs. We felt the meeting we had with your staff September 29, 2011 to discuss our concerns was very productive).
- The review of the definition of "small" credit unions.<sup>[1]</sup>
- Tailoring proposals such as the one on Interest Rate Risk (IRR) management to exclude credit unions with assets of \$10 million or less and to limit the impact on credit unions with assets of up to \$50 million.<sup>[2]</sup> We did not support the proposal but do agree that finding ways to limit the applicability of regulations is appropriate.
- The proposed use of certain derivatives to hedge against interest rate risk.
- Efforts to revitalize the Regulatory Flexibility Program, including the waiver process.
- Your announcement October 6, 2011 that the agency would review its policies regarding troubled debt restructurings (TDRs).
  - A number of credit unions are working with their members to modify their loans and help them stay current on their payments, including their mortgages, in the face of changed economic situations. However, two major issues have arisen regarding TDRs.
  - One is that some examiners discourage credit unions from modifying loan terms when members experience reduced economic circumstances.

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[1] CUNA's Small Credit Union Committee, chaired by Frank Michael, President and CEO of Allied Credit Union, California, will be following up with the agency to provide recommendations on the definition of "small credit unions." The current definition contained within 12 U.S.C. § 1790d(f)(2) (Section 216 of the FCU Act) of \$10,000,000 is not comparable to other financial regulators' definitions of small institutions. For instance, for banks, the level is \$175,000,000.

[2] However, the overall interest rate risk proposal as drafted represents a stark example of regulatory overkill, as it would tie National Credit Union Share Insurance Fund coverage to compliance with the new IRR rule, once it is in effect.

- Second, regulatory and reporting requirements for TDRs are overly cumbersome. Credit unions must segregate TDRs from other loan modifications and manually track loan payments generally for the first six months after the modification. CUNA would like to work with NCUA to improve the reporting process for TDRs and to facilitate the ability of more credit unions to work with their members who can repay their debts but need additional assistance through a loan restructuring to be able to do so.

These positive developments demonstrate that the agency has many options for minimizing the impact of its regulations. However, we urge the agency to consider what additional steps can be taken to alleviate credit unions' regulatory burdens to a much greater extent, as outlined in the recommendations below.

## **II. CUNA's Recommendations to Improve the Regulatory Process and Relieve Credit Unions' Regulatory Burdens**

### **A. NCUA Should Consider a Moratorium on New Regulations**

A number of credit unions have urged NCUA to announce a regulatory moratorium on new requirements for a set period of time, of for example, six months. There is considerable merit in this idea, especially as there are no new, material systemic problems within the credit union system, current safety and soundness concerns within natural person and corporate credit unions seem to be manageable, and the number of Camel Code 1 and 2 credit unions (based on the September 2011 NCUSIF report to the NCUA Board) has actually increased, although slightly. Also, the percentage of insured shares in CAMEL Code 4 and 5 credit unions has decreased from 5.72% in December 2009 to 3.96% in August. (This is also down from 5.04% in January 2011 and from 4.57% in July of this year.)<sup>[3]</sup>

In light of the current health of the credit union system, we urge the agency to consider a regulatory moratorium for at least six months. (The NCUA Board would, of course, be able to issue rules during this time period to address any significant safety and soundness concerns or technical matters, as determined by the agency.)

### **B. The Regulatory Process Can Be Improved**

Credit unions have raised a number of concerns about the regulatory process generally. Because there is a direct connection between the process for developing rules and the regulatory burden credit unions must shoulder, we urge the agency to consider ways to improve the rulemaking process, such as by incorporating the following characteristics and principles into every rulemaking.<sup>[4]</sup> These

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[3] Report to the NCUA Board on the National Credit Union Share Insurance Fund, September 22, 2011.

[4] While some of these steps are performed in some fashion by NCUA, not all are consistently followed with every rulemaking.

recommendations are fully consistent with the recent Executive Order from President Barack Obama regarding the regulatory process at independent agencies.<sup>[5]</sup>

- Unless required by statute, regulations should generally be limited to addressing material safety and soundness problems.
- Such rules that seek to address problem areas should apply only to those credit unions that engage in activities that directly cause the problems in question, unless otherwise directed by Congress.
- Whether under the auspices of the Regulatory Flexibility Program or a new initiative, NCUA should reinstate and expand the list of regulatory requirements (those that are not mandated by Congress) that well-managed credit unions do not have to follow.
  - Examples of this would be to exempt well-managed, well-capitalized credit unions from some of the requirements in the member business loan rule, such as personal borrower guarantees, loan-to-value ratios and others, that are not required by the Federal Credit Union Act (FCU Act).
- Before issuing any new proposal, the agency should, as a general rule, solicit input on the problems the proposal would address.
  - Input should be sought on whether a new rule is needed to address such problems or whether other approaches would be reasonable.
  - The feedback should include views from credit unions and credit union advocacy organizations in meetings and conference calls with NCUA officials, responses through the agency's website, and comments to an advance notice of proposed rulemaking or through all of these vehicles.
  - NCUA should publish on its website a list of the groups that have provided feedback and a summary of their recommendations.
  - The Consumer Financial Protection Bureau is following such an approach of soliciting input prior to a rulemaking, and it seems to be working very well.
- Any new proposal should include a discussion of the input and why the agency is proceeding with a proposal.
  - If there is an existing rule or policy already covering the problem, the agency should address why more regulation is needed. The agency should also address replacement of the existing rule.
- Any new proposal should be supported by sufficient data and information that fully explains the nature and extent of the problem being addressed by the proposal.
  - This should include the harm to the National Credit Union Share Insurance Fund.
  - Commenters should be encouraged to comment on the agency's data and provide their own analysis.

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[5] Executive Order 13563, January 18, 2011; White House Press Statement, "Executive Order – Regulation and Independent Regulatory Agencies," July 11, 2011.

- Any new proposal should include the legal basis for the proposal, and commenters should be encouraged to comment on whether they support or disagree with the legal analysis.
- Any new proposal should include an accurate cost-benefit analysis that is fully explained, as well as an accurate paperwork and regulatory burden assessment. All such analyses should address the impact of the proposal on complex credit unions as well as on small ones.
- Any final rule should more completely explain significant concerns and disagreements presented by commenters and why the agency is following or disregarding those comments.
  - This should include the agency's data, costs/benefits review, regulatory burden assessment, and legal analysis.
- No final rule should include specific provisions that make compliance with its requirements a condition that credit unions must meet in order to obtain and continue National Credit Union Share Insurance, unless required by statute.
  - The agency already has sufficient authority to compel compliance without adding such provisions that seem harsh and unnecessary.
- Commentaries should be developed by NCUA and provided with major regulations. This would be similar to commentaries issued by the Federal Reserve Board, which are processed as a regulation with comments from stakeholders.
- NCUA should improve its process for seeking comments on the agency's annual regulatory review by providing a report on its website each year on how it plans to address recommendations received and by providing a synopsis of the comments.
- With regard to proposals and recommendations from the Federal Financial Institutions Examination Council, NCUA seems to have an understanding with the FFIEC that its rules will be automatically adopted by NCUA. However, we question whether this approach is always appropriate.
  - A thorough analysis of all such FFIEC rules should be conducted to determine the impact on all insured credit unions prior to adopting such rules.
  - NCUA should look for ways to make modifications that reinforce and take credit union characteristics into consideration.
    - An example of this is the recent joint proposal on executive compensation. While there is a requirement under Dodd-Frank for NCUA to develop a rule with the other federal financial regulators, there was no recognition in the proposal or supplementary information that distinguished credit unions, which have not generally developed inappropriate executive compensation practices, from banks and others that have.

### **C. NCUA Should Address Examination Issues**

While issues regarding the examination process and examiners are perennial, the number of concerns credit unions have raised regarding examinations increased appreciably with the onset of the current economic crisis. Working with our Examination and Supervision Subcommittee, and your staff at the agency, CUNA produced last year a guide to the examination process, including a list of principles credit unions may rely on when disputes with examiners arise. We appreciated the agency's review of the CUNA guide, which credit unions continue to report they find very useful. We have made the guide widely available at no cost to leagues and member credit unions.

While the number of complaints about examinations seems to have leveled off in some areas, there are improvements in financial reporting and the examination process that we urge the agency to undertake. These include:

- Make every effort to resolve disagreements with credit union officials before issuing a DOR or LUA.
  - We are aware of the recent NCUA Office of Inspector General's (OIG) report raising concerns about the lack of implementation and enforcement of DORs.
  - We agree that when well-documented and substantiated material safety and soundness problems necessitate a DOR, steps should be taken to ensure such problems are addressed in a timely manner by the affected credit union as well as by examiners. Nonetheless, there is a real concern that the OIG report will be used by examiners to become inappropriately aggressive in some situations in following through on DORs.
  - In any event, examiners should not rush to issue documents of resolution and letters of understanding and agreements before first trying to work issues out with credit unions.
  - Also, examiners should use their regulatory flexibility to allow credit unions to develop their own solutions before imposing harsh requirements.
  - In addition, we are concerned that some examiners are inserting "standard business practices" into DORs and LUAs, which are then treated as pseudo regulation outside of the rulemaking process.
- Clarify and make more information available to credit unions regarding the role of the agency's ombudsman in addressing certain examination issues and the agency's appeals process for challenging examiner findings and directives.
  - NCUA has provided some information to credit unions on these issues, but confusion remains about how credit unions may appeal examiner decisions and whether such challenges will receive fair consideration.
  - NCUA should provide an annual report on the activities of the ombudsman, and the frequency of use by credit unions of the appeals process (including data on the nature of the issues appealed and the extent to which such appeals are successful).

- NCUA should establish a confidential process in which credit union leaders can discuss with the ombudsman specific, constructive suggestions or concerns on CAMEL ratings and other exam issues.
- Direct examiners to stop enforcing agency guidance as if they are regulations.
- Direct examiners to refrain from interpreting regulations that credit unions must follow but that are implemented by other agencies, such as Truth-in-Lending.
- Reinforce to examiners that their directives must be based on board regulations or policies and that their interactions with credit union officials must be respectful at all times.
  - Examiners should provide the legal authority to the credit union for all directives.
- Allow credit unions, working with their accounting practitioners, to determine the adequacy of their Allowance for Loan and Lease Loss accounts.
  - Examiners should not require credit unions to increase their provisions for these accounts without specific facts and data that the account is deficient.
- Give full consideration to reinstating the 18-month exam cycle for CAMEL Code 1 and 2 credit unions.
  - The agency has not provided any report to the credit union system on why the 12-month examination cycle is necessary for the healthiest of credit unions.
  - In light of that, the 18-month cycle seems to be more efficient, especially since there is ongoing reporting by credit unions between examinations.
- Clarify the role of state and federal examiners in joint exams. Once clarified, NCUA should more carefully maintain the relationship between state and federal examiners.
- Review the entire 5300 form and reporting process.
  - While the agency does seek comments on proposed changes to the form, the agency should consider seeking comments on the entire 5300 report to solicit recommendations on improving every aspect of the form.
- Allow credit unions to continue providing multi-featured open-ended lending programs. (This relates to the discussion on the following page of agency interpretations of rules it enforces but does not write.)
  - Until the issue of compliance with Regulation Z, Truth-in-Lending, for multi-featured open-end lending programs can be resolved with the Consumer Financial Protection Bureau, examiners should not direct credit unions to stop using these programs.
  - CUNA and CUNA Mutual are pursuing this matter with the CFPB currently.
- Refrain from issuing CAMEL scores for FISCUs; this is best left up to the state regulator. Multiple CAMEL scores create confusion and unnecessary work for a FISCU that disagrees with and chooses to challenge its score.
- Clarify the criteria that examiners look at for each of the CAMEL score components, as well as ensure such criteria are consistently applied by examiners. For example, the manner in which examiners critique the Management of a credit union may, and in some reported cases has, focus more

on measuring risk aversion and regulation compliance than the quality of management.

#### **D. NCUA Should Not Apply Rules and Procedures Designed for Largest Banks to Credit Unions**

Among the numerous provisions in the Dodd-Frank Act that impact credit unions, one that has not received much attention outside of the agency is the provision that includes NCUA on Financial Stability Oversight Council. It is appropriate that NCUA be included on the Council, which has the authority to override regulations from the CFPB. Including NCUA on the Council should also help insure that the agency will have early warnings of any major problems involving mega banks that might affect credit unions. Yet, there is a concern that regulations and guidance developed by the FSOC to address problems within the largest financial institutions in the world will, in some form or another, find their way into proposals developed by NCUA for credit unions. We strongly encourage NCUA to maintain a bright line between rules that are appropriate for the largest players in the financial marketplace and regulations that fit the risk profile of credit unions.

### **III. CUNA Recommendations to Relieve Specific Burdens That Do Not Require Statutory Changes**

#### **A. Excess Net Worth Standards Should be Curtailed**

For quite some time, credit unions have been concerned that examiners expect them to maintain net worth ratios far in excess of the 7% plus any risk-based requirements necessary under the FCU Act to be well-capitalized. Compelling credit unions across the board to meet arbitrary standards beyond what the FCU Act and the agency's own rules direct is unwarranted and superfluous, in light of credit unions' overall risk profile.

We urge NCUA, at least in the case of healthy credit unions, to allow them to manage their own risks by determining for themselves, (under appropriate rationale and justification) how much net worth, if any, is needed beyond what is required by the agency's rules.

#### **B. MBL Regulatory Requirements Should Be Streamlined**

You have championed credit unions as an important source of funding for small businesses and have consistently recognized that such activity benefits not only the individual businesses but also their communities and the broader economy. As you have already stated to Congress, credit union member business lending is generally a safe and prudent endeavor. Net charge-off rates for member business loans (MBLs) at credit unions are lower than for all other loan types combined. Also, MBLs at credit unions have lower delinquency rates than commercial loans for banks.

Your testimony of October 12, 2011 in support of raising the 12.25% of assets cap on credit union member business lending provided clear and convincing data that will be very useful in refuting the erroneous claims of banker groups that such loans carry undue risks. We believe that with the support of the Obama Administration, NCUA, and key members of Congress, the opportunity for advancing the legislation to raise the cap on member business lending has never been greater.

Meanwhile, we believe there are some regulatory changes that the agency could undertake to facilitate MBLs at some credit unions.

- As we have stated in the past, we believe that loan-to-value ratios for MBLs should be higher.
- We also think, unless addressed in the upcoming Reg-Flex changes, that the waiver process for MBLs to avoid certain regulatory requirements, such as the LTV limits, can be vastly improved.
  - For example, there should be more specific guidance provided to credit unions on what data they should include to support their application and the timetable under which the agency will let the credit union know whether the application is approved.

### **C. Certain Current Proposals Should Not Be Finalized**

In addition to the CUSO and the IRR management proposals, which we have urged the agency not to adopt as issued for comments, the executive compensation proposal should also be substantially revised before it is approved in final form. In addition to concerns about this this proposal already raised in this letter, the cutoff level for compliance with the “special requirements” for larger institutions we believe is too low for credit unions. The level for banks will be at \$50 billion while the level for credit unions will be at \$10 billion. Banks, which did have such arrangements, should not have a higher threshold for escaping requirements, than credit unions, which did not provide such compensation. We realize that few credit unions are likely to be covered by the final rule, but leaving the impression that credit unions need a lower threshold than banks, which did provide compensation packages to officials based on undue risk-taking we feel is unfair and inappropriate.

### **D. “Underserved Area” Definition Should Be Revised**

In 2008, NCUA adopted changes that clarify the process for demonstrating that an area is “underserved” and thus eligible for credit union service on that basis. CUNA urged clarifications in the process but believe the agency’s field of membership requirements could be further streamlined to help both communities without adequate financial services and credit unions that want to provide services to those communities. We think that the provisions on economic distress criteria, significant unmet needs and whether an area is underserved by other depository institutions



could be further simplified and we urge the agency to review the regulation for ways to enhance credit union service to underserved eras.

#### **E. Additional Credit Union Activities and Flexibility Should be Permitted**

Incidental Powers – Using its “incidental powers” provided in the Federal Credit Union Act, NCUA should approve several new activities or authorities for federal or federally insured credit unions. These include:

- Allowing well-managed federal credit unions to engage in incidental activities authorized for state credit unions in the state or states in which the federal credit union operates.
  - Any activities prohibited by or inconsistent with the FCU Act for a federal credit union would not be permitted.
  - CUNA is undertaking a review of statute statutory provisions that are more flexibility for credit unions than the FCU Act and will share our review in the coming weeks.

CUNA also recommends that NCUA take other steps to support reasonable credit union activities that would enhance their ability to serve their members. These include:

- Facilitate the ability of federally insured credit unions to offer Interest on Lawyers Trust Accounts (IOLTAs) by basing NCUSIF insurance coverage on the clients whose funds are in the account, as opposed to the attorney.
- Permit federal credit unions to accept pre-paid funeral home accounts under the Trustee or Custodial Services category.
- Allow federal credit unions to manage repossessed residential properties for other credit unions.
- Authorize foreign currency investments under a pilot program, as recommended in CUNA’s October 29, 2007 comment letter.
- Permit credit unions to determine for themselves whether they need to obtain a fill assignment of a lease, consistent with what the Office of the Comptroller of the Currency provides for national banks. Also, under current leasing rules for federal credit unions (FCUs), the estimated residual value may not exceed 25% of the original cost of the leased property, unless the amount above 25% is guaranteed. We believe these limits are too restrictive and place credit unions at a competitive disadvantage with other financial institutions.

CUNA is following up on these issues with NCUA’s Office of General Counsel.

#### **F. Bank Secrecy Act Compliance Should Be Facilitated**

Bank Secrecy Act (BSA) requirements under Part 748 of NCUA's regulations supplement BSA regulations from the Department of the Treasury's Financial Crimes

Enforcement Network (FinCEN). Compliance with BSA requirements remains one of the top regulatory issues for a number of credit unions.

We encourage NCUA to consider working with other federal financial regulators to provide additional guidance on BSA compliance and to minimize overlap with FinCEN's regulations.<sup>1[6]</sup> For example, an area of concern with Part 748 relates to Appendix B. This document includes NCUA's guidance on credit union response programs for unauthorized access to member information. CUNA frequently receives questions from credit unions about their responsibilities following a merchant data breach. In particular, the questions relate to whether a credit union needs to send a member notice and/or notify NCUA when a merchant's breach impacts cards issued by that credit union. Based on inquiries from credit unions, there appears to be a lack of clear guidance on notice requirements when there has been a security breach. We ask NCUA to expand the guidance included in Appendix B to provide more practical information that will assist credit unions.

#### **IV. NCUA Should Work with the CFPB to Encourage a Review of Key Rules and Requirements**

As we understand it, NCUA is working with the Consumer Financial Protection Bureau in number of areas, particularly since the CFPB has assumed responsibility for the 19 consumer protection laws that were transferred to it July 21, 2011 under the Dodd-Frank Act.

One overarching concern that credit unions have raised is how the CFPB and NCUA will coordinate regarding the implementation of consumer financial protection laws. There are also concerns about whether credit unions will be subjected to burdensome data collection requirements and how NCUA's own Office of Consumer Protection fits into the consumer protection regulatory regime.

Under the Dodd-Frank Act, the CFPB will write such regulations for all covered entities, including credit unions, and enforce them for institutions with assets of more than \$10 billion, which includes the three largest credit unions. NCUA and state regulators will retain supervision and enforcement authority over federally insured credit unions with assets of \$10 billion or less.

We urge NCUA to weigh in with the CFPB so that CFPB examinations of the largest credit unions are reasonable and manageable. We also urge NCUA to resist the temptation to apply examination standards and tactics to credit unions that the CFPB

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[6] In addition, we urge NCUA and the other federal financial regulators to support legislative changes to increase the threshold for current transactions from the \$10,000 level established decades ago to \$20,000 and at least doubling other key thresholds, such as the \$3,000 trigger for reporting wire transfers and the \$5,000 threshold for filing a Suspicious Activity Report (SAR).

may need to employ for the largest banks or institutions that have heretofore been unregulated.

The CFPB has asked CUNA for its priorities in terms of the work of that agency, and we will be sending a letter to that agency very shortly outlining our recommendations for the CFPB. In addition to helping to streamline all consumer financial protection rules generally to help minimize their impact on credit unions, there are three regulatory areas we will urge the CFPB to review. We encourage NCUA to help persuade the CFPB to undertake these reviews as soon as possible.

Review of Mortgage Loan Disclosures and Mortgage Loan Rules – Given all the disclosures that lenders must provide to borrowers, consumers often indicate that they find the home loan and home equity line of credit approval processes confusing if not intimidating. Likewise, given the complex and numerous legal requirements imposed on them, mortgage lenders are also frustrated.

The CFPB's efforts to integrate certain Real Estate Settlement Procedures Act (RESPA) and Truth-in-Lending mortgage loan disclosure forms, as required by the Dodd-Frank Act are well underway. However, concerns about the process go far beyond these forms to include, for examples, the vast range of TILA minutia that apply to mortgage lending and related products as well as requirements under the Secure and Fair Enforcement of Mortgage Licensing Act (SAFE Act). CUNA has urged the CFPB to undertake a far more robust review of all mortgage loan disclosures and other legal requirements for lenders, including credit unions. The goal of such a review would be to remove simply [this adverb seems to be in the wrong place] requirements for lenders while streaming information for consumers. We urge NCUA to help encourage the CFPB to engage in this review.

Notices on ATMs (Electronic Fund Transfer Act, Regulation E) – Under the Electronic Fund Transfer Act (15 U.S.C. § 1693) an ATM operator is required to provide a notice that a fee will be imposed for using the ATM and disclose the amount of any fee before the fee is imposed. The notice is required to be on the ATM screen, or on a paper issued by the ATM before the consumer is irrevocably committed to completing the transaction. A notice must also be provided in a prominent and conspicuous location on or at the ATM.

Failure to comply with these requirements may subject an ATM operator to damages suffered by a consumer as a result of the failure to comply and a statutory penalty of \$100-\$1000. Violations may also be the subject of a class action and an ATM operator may be liable for the lesser of \$500,000 or 1% of the net worth of the operator, in addition to court costs and reasonable attorneys' fees.

It is sometimes impossible to ensure that the notice posted on or at the ATM will remain in place. There are concerns that some notices are being removed in order

that lawsuits alleging noncompliance with those notice requirements may then be filed.

Credit unions that are making every effort to comply in good faith with the EFT requirements are nonetheless the target of some of these lawsuits. While the notice requirements are statutory, the CFPB has authority under the EFT Act to exempt institutions from certain requirements under the Act. We are urging the CFPB to use that authority to eliminate redundant ATM disclosures, which are of questionable utility to consumers and are subjecting credit unions to needless costs and potential lawsuits. It would be very useful for NCUA to work with the CFPB to encourage the agency to consider this step.

Other Regulations: Privacy and FACT Act – Over the past several years, numerous rules have been issued under various laws with which credit unions must comply. These include regulations under the Fair Credit Reporting Act, as amended by the Fair and Accurate Credit Transactions (FACT) Act and the Privacy of Consumer Financial Information rules under the Gramm-Leach Bliley Act. Under these rules, a number of regulatory burdens have been imposed on credit unions. We are urging the CFPB to conduct a review of these requirements for financial institutions as soon as possible to determine how such requirements can be streamlined. We urge NCUA to support these review efforts.

### **Conclusion**

Nothing in this letter should be construed as supporting lax regulation or urging the agency to ignore problem situations or issues. The regulation of federal credit unions and the oversight of the safety and soundness of all federally insured credit unions is what Congress directed NCUA to do and CUNA supports that. Moreover, when the agency performs its job effectively and efficiently, the credit union system is strengthened and credit unions and their members benefit.

However, if current regulatory burdens are not contained and a process is not developed for minimizing future requirements, credit unions will continue to struggle under the weight of too many requirements. Moreover, they will experience increased difficulties as they endeavor to respond to changes in the financial market place and the needs of their members. As a result, credit union members will feel the effects through reduced service in many instances.

Credit unions, leagues, and CUNA support the agency's ability to perform its job in a reasonable, appropriate manner, but credit unions need to be able to do their jobs as well—and without unnecessary interference from regulations or examiners.

We would welcome the opportunity to work with the agency to help achieve as much regulatory relief as possible for credit unions, consistent with statutory requirements and reasonable safety and soundness objectives. I urge you to consider these

recommendations to improve the regulatory environment for credit unions, which will benefit them, their members, and their communities.

Best regards,

A handwritten signature in black ink, appearing to read "Bill Cheney", with a long, sweeping horizontal stroke extending to the right.

Bill Cheney  
President & CEO

# EXHIBIT C

# OHIO CREDIT UNIONS: The Credit Union Difference in Action

## For People, Not For Profit

Since 2008, **Wright-Patt Credit Union (Fairborn)** has paid excess earnings back to its members. Most recently, the credit union's 210,000 members shared a dividend of more than \$5 million, bringing the four-year total returned to the membership to more than \$16 million.

**Dover-Phila Federal Credit Union (Dover)** issued a \$1.6 million year-end bonus dividend to more than 35,000 members, for the 17th consecutive year. The \$324-million credit union awarded a 50% bonus dividend and an 8% interest rebate.

**Ohio's First Class Credit Union (Cleveland)** declared a loan interest rebate and bonus dividend for the fifth consecutive year. Members with loans received a 5% rebate on the interest they paid during 2011. In addition, the credit union paid a 25% dividend to members with savings accounts.

## Providing Affordable Financial Products

**Hancock Federal Credit Union (Findlay)** began asking members about their existing loans at other financial institutions and suggesting how they could save money by receiving a lower interest rate or shorter-term loan at the credit union. Lending officers developed an illustration that showed members how much they could save over the life of their loan -- and members took advantage. To date, the credit union has saved its members more than \$400,000 in interest.

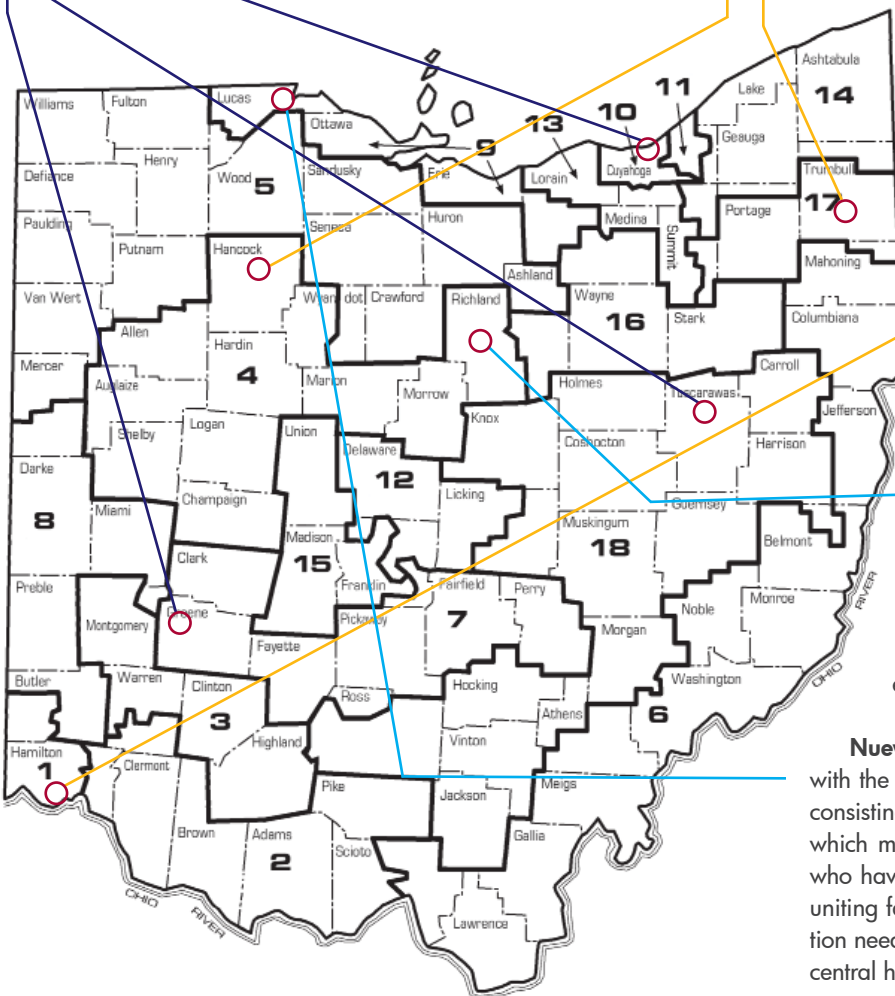
**Seven Seventeen Credit Union (Warren)** instituted the Simplify and Save program, which provided tools, tips and resources to help members get the most out of their money. The credit union created a goal to help members save \$1 million through paying down debt and refinancing existing loans.

**Classic Federal Credit Union (Amelia)** and **Cincinnati Central Credit Union** work individually with members to help them survive economic hardships. Classic recently helped a family who had mounting debt as a result of unemployment, allowing them to consolidate their debt into an affordable monthly payment at a lower interest. A member of Cincinnati Central was left to file bankruptcy after a traumatic life event, and although her credit history made her an unlikely candidate, the credit union was able to offer her a car loan so she could get back on her feet.

## Serving the Underserved

**GROhio Community Credit Union (Mansfield)** works closely with less-than-prime members, believing this consumer market typically avoided by larger financial institutions is how the credit union can best serve the community, while still lending responsibly. For example, the credit union offers a \$500 unsecured loan option which members utilize for everyday living expenses such as tires, insurance, and real estate taxes.

**Nueva Esperanza Community Credit Union (Toledo)** works with the underserved members of the South Toledo community, consisting of many Latino immigrants. The credit union's name, which means 'New Hope' in English, provides loans to many who have been turned down by the few banks in the area, reuniting families through immigration loans, fulfilling transportation needs through car loans, and even helping members install central heating in homes.



# EXHIBIT D





OHIO CREDIT UNION FOUNDATION

# Credit unions are helping Ohioans in today's economy

The National Credit Union Foundation conducted a financial education survey among Ohio's not-for-profit cooperative credit unions to measure the amount of financial education that they provide to their members. Please see results below.



## 93%

of Ohio's credit unions spent a total of \$674,000 to provide financial education in 2010.

Ohio credit unions provided

# 2,675 HOURS

of formal financial counseling and

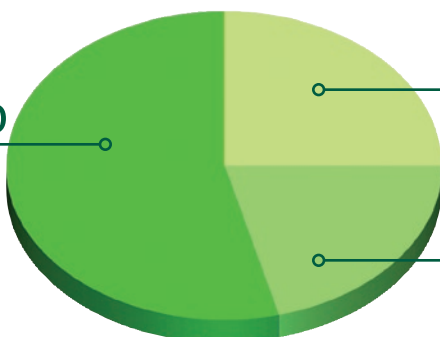
# 33,218 HOURS

of financial advice to their members in 2010.

## FINANCIAL COUNSELING FOR ADULTS

## 54%

provided financial advice at the credit union



## 25%

provided formal financial counseling at the credit union

## 21%

referred members to formal financial counseling services

Ohio credit unions worked with their members in financial trouble to help them avoid bankruptcy, foreclosure, and overwhelming debt. As a result:

## 2,206 Members

entered debt management plans

## 463 Members

established mortgage workouts

## MOST POPULAR COUNSELING TOPICS

1. Credit Report Reviews
2. Money Management
3. Debt Management
4. Savings Accumulation
5. Foreclosure Prevention/Loss Mitigation
6. Mortgage Delinquency/Default Resolution
7. Home Equity Loans
8. Pre- and Post-Homebuyer Counseling
9. Retirement and Estate Planning
10. Pre-Bankruptcy Filing
11. Small Business Planning

## 82%

of credit unions reviewed credit reports with their members

## A variety of groups benefit from Ohio credit unions' free financial education

GenX • Military Families • Parents • Teens  
Boomers • Minorities • Senior Citizens  
College Students • Pre-Teens • Homebuyers  
Immigrants • Small Business Owners  
GenY • Teenagers • Preschoolers

## BREAKING THE CYCLE OF DEBT



To treat the cause (not the symptoms), many credit unions require members to complete financial education or counseling for:

- Excessive Overdrafts
- Loan Workout Plans
- Habitually Delinquent Accounts
- Dependence on Payday Loans
- Certain Loans

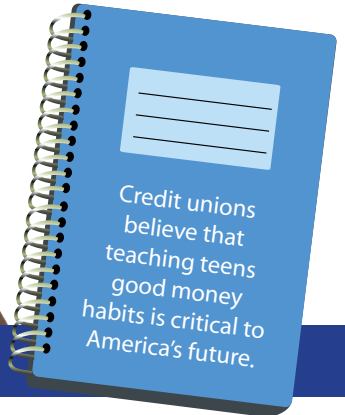
Data is based on responses from 76 Ohio credit unions that serve 47.3% of all Ohio members (1,270,908 out of 2,684,326 on 6/30/11). The credit union with the smallest membership that responded has 128 members, while the largest credit union has 198,742 members. Credit unions were asked to report data for calendar year 2010.



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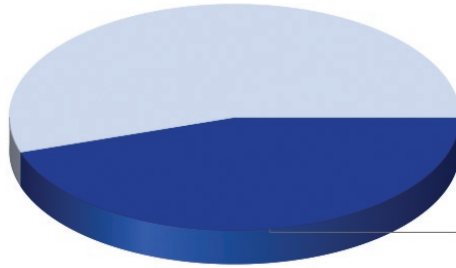


## FREE FINANCIAL EDUCATION FOR STUDENTS

**8** Ohio credit unions have in-school branches (staffed by 76 student workers).

*These branches in elementary and high schools serve more than 575 student members with \$57,000 on deposit.*

**55%** of credit unions provide online resource centers for students and educators



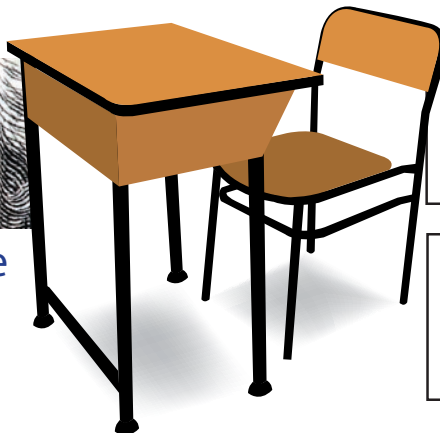
**45%** of credit unions provide classroom financial education to students

**21** Credit unions hosted *experiential learning programs* (reality events) to students, providing opportunities to practice real-world financial decision-making

**14,300** Students Attended **319** Reality Events



**25%** of credit unions provide online educational games or simulations



Ohio credit unions provided **2,274** CLASSROOM PRESENTATIONS in Ohio schools and youth group meetings

**57,500** STUDENTS PARTICIPATED in the credit unions' classroom presentations

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