Testimony of

Lynette Smith

President/CEO of Washington Gas Light Federal Credit Union

On behalf of

The National Association of Federal Credit Unions

"Who's in Your Wallet? Dodd-Frank's Impact on Families, Communities and Small Businesses"

Before the

House Financial Services Committee Subcommittee on

Oversight and Investigations

July 19, 2012

Introduction

Good morning, Chairman Neugebauer, Ranking Member Capuano, and Members of the Subcommittee. My name is Lynette Smith and I am testifying today on behalf of the National Association of Federal Credit Unions (NAFCU). I serve as the President and CEO of Washington Gas Light Federal Credit Union in Springfield, Virginia. Washington Gas Light FCU has more than 4,600 members with assets totaling $86.9 million.

At Washington Gas Light our mission is to "Bring our Members Financial Dreams to Light." We often times find ourselves as a lender of last resort for members with challenging credit histories. We pride ourselves in educating our members by offering a series of seminars providing financial literacy education tools that empower them to manage their personal goals from buying a home to retirement planning. We also help them take advantage of the free automated services we provide such as bill pay and home banking.

NAFCU is the only national organization exclusively representing the interests of the nation's federally chartered credit unions. Representing over 800 credit unions, NAFCU members collectively account for approximately 66 percent of the assets of all federally chartered credit unions.

On behalf of NAFCU and the entire credit union community I would like to thank you for holding this important hearing. We appreciate having the opportunity to share with the Subcommittee the impact that the *Dodd-Frank Wall Street Reform and Consumer Protection Act* [P.L. 111-203] is having, and will continue to have, on credit unions and their 94 million member-owners. As community-based financial service providers, credit unions are in the forefront serving Main Street America by helping small businesses grow as they recover from the financial crisis.

Background on Credit Unions

Historically, credit unions have served a unique function in the delivery of necessary financial services to Americans. 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 would 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 credit unions fill today for Americans from all walks of life. 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 over 75 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 totally 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.

The nation's approximately 7,000 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. These singular rights extend all the way from making basic operating decisions to electing the board of directors— something unheard of among for-profit, stock-owned banks. 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.

As consolidation of the commercial banking sector has progressed, with the resulting depersonalization in the delivery of financial services by banks, the emphasis in consumer's minds has begun to shift not only to services provided, but also—more importantly—to quality and cost of those services. Credit unions are second-to-none in providing their members with quality personal financial services at the lowest possible cost.

The Dodd-Frank Act and Credit Unions

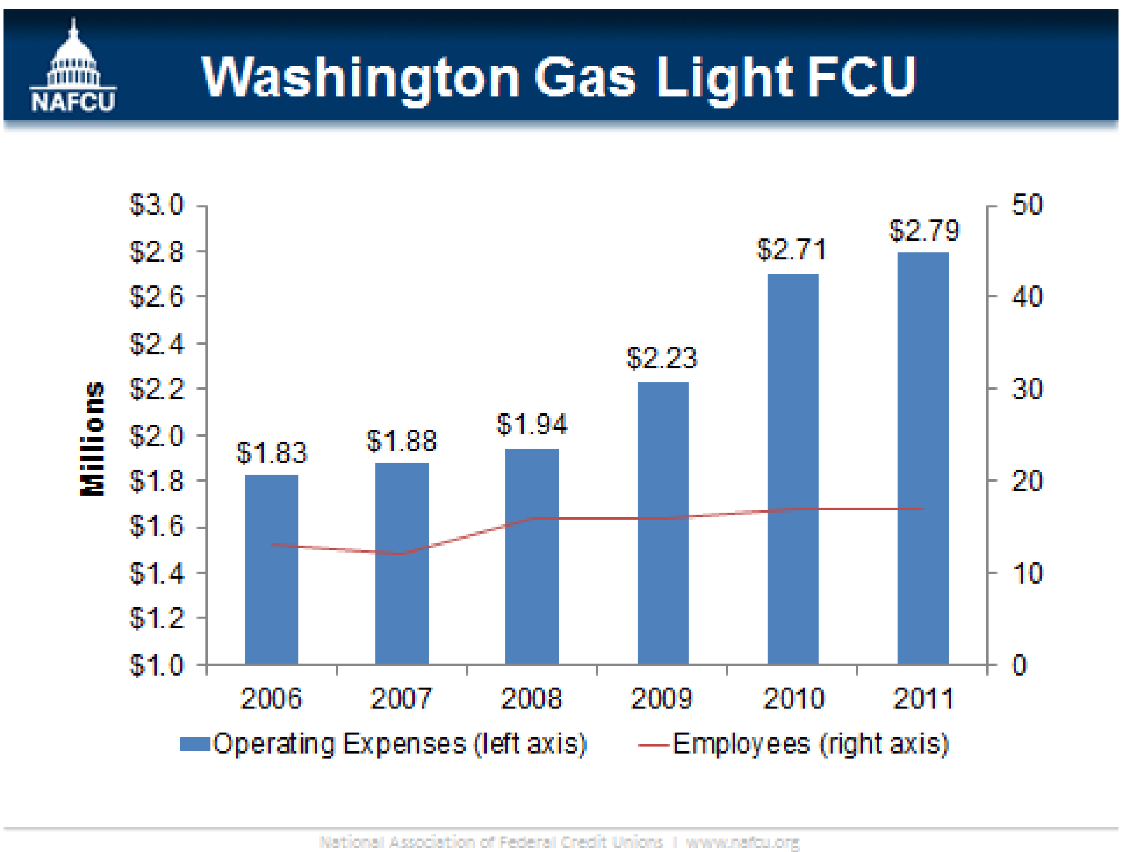
As widely recognized by members of Congress on both sides of the aisle, credit unions and other community based financial institutions were not the root cause of the housing or financial crises. Historically, credit unions have been among the most highly regulated of all financial institutions, facing restrictions on who they can serve and their ability to raise capital. Still, despite the fact that not one Congressional hearing was held on the issue of whether or not credit unions should be subject to any aspect of the new Consumer Financial Protection Bureau (CFPB)—and despite strong opposition from NAFCU—all credit unions are subject to the rule making authority of the CFPB. While there are credible arguments to be made for the existence of the CFPB, its primary focus should be on regulating the unregulated, not adding new regulatory burdens to entities that already fall under a functional regulator. In short, we are very concerned that efforts at the CFPB to rein in bad actors and greed on Wall Street will inevitably have a negative impact on community based financial institutions like credit unions, especially when it comes to regulatory and compliance burdens. Early evidence shows those concerns to be well placed. For example, credit unions will need to be in compliance with the nearly 2,000 pages of the CFPB's first two major rule proposals.

One of the biggest impacts Dodd-Frank has had on credit unions comes from the debit interchange price cap added on the Senate floor without benefit of a hearing in either the Senate or House. While this hastily crafted provision was supposed to exempt credit unions under $10 billion from its impact, market forces have already seen some credit unions begin to have higher debit card costs and declining interchange revenue. Some early evidence is starting to show that the worst concerns of credit unions may come true, and that market forces will eventually push everyone toward to the artificial capped rate.

Furthermore, with no end in sight, the steady stream of regulations pouring out of Dodd-Frank only adds to the existing compliance burden our nation's credit unions already face. While many of them are well-intentioned to correct the abuses of others, for credit unions they are often a solution in search of a problem. I cannot overemphasize how burdensome and expensive unnecessary Dodd-Frank Act related compliance costs will be for credit unions. We can only hope Congress will urge regulators to do more robust cost-benefit analysis of potential regulations and follow-up once the regulations are in place and make changes if the costs are too high.

Washington Gas Light has a staff of just 17. My employees and I already spend countless hours updating disclosure booklets and web sites while constantly reviewing documents to comply with the never ending changes to laws and regulations. Just in the last few years there have been extensive changes made from new credit card legislation to new disclosure requirements. Layered on top of this will be a number of rules from the CFPB that will directly impact credit unions. This will compound existing challenges and uncertainty.

Every dollar we spend at my credit union to keep up with various regulations and reporting requirements is one less dollar we can use towards credit availability for our members. My credit union is healthy, growing and has good loan demand. Still, rather than looking to hire a new loan officer, the growing compliance burden means I must look to hire a compliance officer. While we still try to make the loans our member's need, the staff time dedicated to compliance means that many often have to wait longer to get their loan. As depicted in the chart below, operating expenses at my credit union have steadily risen in large part due to increased compliance burden, while the number of employees at Washington Gas Light has remained nearly constant in that same timeframe.



Financial Stability Oversight Council Positioned to Facilitate Robust Regulatory Coordination

With households still recovering from the greatest financial crisis since the Great Depression, it has never been more important for regulators to institute commonsense regulations that strike a balance between protecting consumers and giving credit unions the flexibility they need to best serve their members.

Under the Dodd-Frank Act, the Financial Stability Oversight Council [FSOC] has a duty to facilitate regulatory coordination. We hope that they take this duty seriously. 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. Essentially, the FSOC is charged with identifying weakness within the regulatory structure and promoting a safer, more stable system.

With respect 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 NAFCU member credit unions have testified on numerous occasions, it is not any single regulation, but an accumulation of regulations from numerous regulators operating independently of each other with little to no coordination that magnifies the undue regulatory burden credit unions face today.

Included at the end of my written statement is a letter from NAFCU to Treasury Secretary Geithner in his capacity as Chairman of the FSOC expanding on the importance of increased regulatory coordination and how this can help keep credit union's focused on serving their members. NAFCU urges the Subcommittee to use its oversight authorities with the FSOC and to keep the FSOC's role in mind moving forward as the full impact of Dodd-Frank unfolds at our nation's credit unions.

Dodd-Frank Rule Making Underway

As widely publicized, the CFPB estimated that its first rule on international remittance transfers would require 7.7 million total employee hours of work for the industry to implement and comply with. This mindboggling headline strikes at the very core of what credit unions fear most – Dodd-Frank mandated regulation will be finalized so quickly, and so often, that community-based financial institutions simply won't be able to keep up.

It is worth noting that revisions that led to the CFPB's final rule on international remittance transfers were originally proposed by the Federal Reserve, but as mandated in Dodd-Frank, finalized by the CFPB. On the same day the rule was finalized, the CFPB simultaneously issued a proposed rule and request for comment that sought feedback on the disclosure process for recurring remittance transfers. The proposed rule also sought comment on whether it should allow an exception for institutions that infrequently provide such services. NAFCU appreciates the Bureau's decision to seek more input regarding the unique problems that arise with preauthorized or reoccurring electronic fund transfers. We hope that this is an openness that will continue in both word and deed.

Under the proposed rule, an exception for remittance transfer providers, presumably made to accommodate small financial institutions, falls far short of offering any tangible relief to credit unions who operate in this space. Those providers making less than 25 international remittance transfers a year would be exempt and therefore free of the extensive disclosure requirements that are mandated for those providers above that threshold. This arbitrary and exceptionally low number will not provide relief for credit unions. A NAFCU survey of our member credit unions found that nearly 84% of those credit unions that provide remittance services, make more than 25 a year. The same survey found that nearly 58% of those that had a remittance program make less than $1,000 per year on the program or operate it at a loss. The new compliance costs of this rule may force many of those to make changes to their programs or eliminate those services outright.

Furthermore, a vast majority of credit unions who provide remittance transfer services rely on open network systems. By the CFPB's own admission, under the rule already finalized, it will be exceedingly difficult for open network systems, as currently configured, to comply. This leaves credit unions with two plausible choices – stop doing international remittance transfers, a service that many members utilize and value, or pay for a massive reconfiguration of the payment networks needed to comply. It should be noted that Congress only recently gave credit unions the ability to do remittances for all consumers in their field of membership, in an effort to reach the under-or un-banked. Without changes, the new rule from the CFPB will likely lead some credit unions to stop remittance services and undo the intent of Congress by discouraging under- and un-banker populations from using credit unions for these services. This is the first of what has the potential to be many financial products credit unions will no longer be able to offer their members as a result of the undue regulatory burden being thrust upon them.

While the international remittance transfer rule was the first and only rule related to Dodd-Frank to be finalized by the CFPB thus far, there are an overwhelming number of upcoming Dodd-Frank mandates that will directly impact credit unions. The CFPB's mandates are particularly daunting as related to Regulation Z, the implementing regulations for the Truth in Lending Act (TILA). Nearly every aspect of current compliance requirements with respect to operating a mortgage portfolio has the potential to change.

By January 2013, the CFPB is expected to expand the scope of coverage under the Home Ownership and Equity Protection Act, address mortgage origination and mortgage servicing standards, amend rules associated with the Truth in Lending Act and Financial Institutions Reform, Recovery, and Enforcement Act, change requirements for escrow accounts and issue rules under Dodd-Frank relative to what constitutes a qualified mortgage (QM).

As subcommittee members are aware, the CFPB request for comment on QMs just closed on July 9, 2012. The request for comment was a follow-up on the Federal Reserve Board's proposed rule regarding a consumer's ability to repay mortgage loans. While NAFCU supports efforts to ensure that consumers cannot enter into mortgages they cannot afford, we are very concerned that the proposal will create more regulatory burden on credit unions. We believe: (1)

credit unions that make qualified mortgages should have a clear safe harbor; (2) disclosure of compensation arrangements are counterproductive to providing consumers with meaningful information; and (3) the 2011 proposal is overly complex. The proposal would require some credit unions, with narrowly tailored programs that require limited verification of income, to significantly overhaul these programs, thus incurring significant cost, even though there will be little benefit to their members. Additionally, many credit union members, including those in the immigrant community and those which operate cash based businesses, may no longer be able to obtain credit due to the inflexible income verification requirements, such as not counting spousal income.

NAFCU appreciates the focus that the House Financial Services Committee has placed on reviewing the QM request for comment from the CFPB. NAFCU strongly supports a clear safe harbor for lenders who have met qualified mortgage requirements.

Additionally on July 9, the CFPB released a much anticipated proposal combining and streamlining the Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) mortgage loan forms. NAFCU has been actively participating in the processes the CFPB has used to gather information leading up to the proposal of this rule, including partaking in the recent Small Business Regulatory Enforcement Fairness Act review panel on this topic. NAFCU is hopeful that these panels will be held in the future, and input given will translate into commonsense rulemaking that doesn’t create additional and unnecessary compliance burdens for credit unions. Still, NAFCU needs these efforts to have real impact on the rulemaking. In the proposed rule, the CFPB details discussion and gives a thorough cost benefit discussion of the rule for small entities, highlights the massive impact of the proposed rule, but makes no changes in the proposal for small entities.

As noted early, this proposal is just shy of 1100 pages. The proposal changes two separate regulations, changes dozens of substantive processes for financial institutions, including the way the annual percentage rate is calculated, changes what disclosures go on loan estimate and loan closing forms, will require hundreds of hours of staff training, and will require the reconfiguring systems and how loans get delivered. That does not even take into account changes that will need to be made with relationships with settlement agents and the like. And this is just one rule. It is not in any way an exaggeration to say that this will have a big impact on our ability to deliver credit.

In addition, while many of the details are yet to emerge about the various mortgage proposals, the sheer pace at which these new rules are scheduled to be implemented should cause serious pause. Even if they are well-intentioned and ultimately bring about positive changes, there is a significant burden on small institutions in just keeping up.

The CFPB recently released its 2012 Semi-Annual Regulatory Agenda which outlines **27** different areas where potential rulemaking may occur in the near future. As the CFPB's final rule on remittances and their mortgage-related proposed rules demonstrate, it will be very challenging for my limited staff of only 17, I am not sure how I can keep up and continue to serve our members' needs.

Review of Existing Regulations

In January of last year, President Obama announced a government review of existing regulations. We hope that this ongoing review by the Administration and the efforts by Congress can recognize what credit unions like mine know all too well – the problem is not necessarily one single bill or regulation, but the cumulative effect of new regulations piled on top of each other, without studying these effects on small financial institutions that don't have an army of lawyers with which to comply. These burdens do not just come from one or two regulators, but from a host of federal agencies and laws that can impact our business. The Dodd-Frank Act just made this worse. For small financial institutions, this is almost a death by a thousand cuts.

As part of this review, National Credit Union Administration (NCUA) Chairman Debbie Matz informed the Obama Administration that, since NCUA began to review their regulations every three years, they have been successful in reducing regulatory burdens. However, I can say from a credit union perspective that burdens on credit unions remain. It is unclear to credit unions whether there is a true process for NCUA to eliminate regulations, or if they have set or met any particular benchmarks in reducing compliance burdens.

In the past two years, NCUA has made changes to its Regulatory Flexibility (RegFlex) program. Under the RegFlex regime certain well-run credit unions were exempt from a number of regulatory requirements. Recently, NCUA expanded the RegFlex program to include all credit unions, but it also eliminated two very beneficial RegFlex provisions relative to fixed assets and personal guarantees. NAFCU feels that NCUA can and should do much more to eliminate outdated regulation. Even small tweaks to NCUA's rules can have a major impact on operations.

Furthermore, NCUA should actively embrace and take into consideration technology advancements when promulgating regulations – that would be one way to ease some burden.

As the CFPB ramps up, NAFCU has actively participated in the Bureau's request for comment on an array of issues including regulatory streamlining. To truly understand how the onslaught of regulation scheduled to be finalized through Dodd-Frank will impact credit unions, one must look at the regulatory environment that already exists. NAFCU is hopeful that the CFPB will ultimately use its authority not only to identify, but also to streamline and simplify regulation where possible. If the CFPB and other regulators will not do this in a timely and effective manner, Congress must step in and do so. As discussed earlier in my testimony, the members of the Financial Stability Oversight Council also have a unique role and distinct responsibility in terms of surveying the current regulatory environment, information sharing, and coordinating with respect to regulation.

Amending or eliminating outdated regulation must be a priority as unnecessary day-to-day compliance costs at credit unions represent resources that could otherwise be used to help members purchase a new car or start a new small business. A prime example of an outdated compliance burden is the redundant and unnecessary requirement in the Electronic Funds Transfer Act and its implementing rule (Regulation E – 12 CFR 1005.16) requiring automated teller machine (ATM) operators to provide two separate notices to consumers regarding the imposition of a fee for use of the ATM. NAFCU appreciates swift action in the Financial Services Committee and on the House floor in passing H.R. 4367. This bipartisan legislation introduced by Representatives Luetkemeyer (R-MO) and Scott (D-GA) will eliminate the physical placard disclosure requirement while retaining the on-screen notice with option for the consumer to decline the transaction. I look forward to Senate passage of this important bill as many credit unions are forced to constantly police ATM machines in an effort to fend-off the threat of frivolous lawsuits, spending time and resources that could be better used to help their members.

Another increased burden for credit unions comes from recent changes in the exam process. Part of the response to the economic crisis was to create new layers of regulation and institute more aggressive enforcement of existing law. Three credit unions, despite no contributions to the crisis, are already subject to new examinations of the CFPB. Many more will ultimately fall into the grasp of CFPB examinations as Congress did nothing to index the thresholds of the Dodd-Frank Act, including the CFPB examination threshold of $10 billion. This means the "supposed" $10 billion exemption is really a disintegrating one that will allow the CFPB to capture more and more institutions under its full power over time. One way for Congress to rectify this would be to pass legislation indexing all thresholds in the Dodd-Frank Act.

Regulators have increasingly tightened examination standards in order to aggressively enforce new and old regulations and to avoid a repeat of the crisis. Exam cycles are shorter, adding an element of burden to credit unions as staff time and resources are dedicated to prepare and respond to the exam. It is with this in mind that we also urge the committee to move forward and vote on the Financial Institutions Examination Fairness and Reform Act (H.R. 3461) introduced by Representatives Capito and Maloney.

I cannot overstate how critical it is for the CFPB to review and simplify the complex regulatory framework credit unions already face. Such an effort could help mitigate layering regulation upon regulation to the detriment of credit unions and their member-owners.

Attached for the Subcommittee's review, please find NAFCU's detailed response to the CFPB's request for comment on regulatory streamlining (Docket No. CFPB-2011-0039). Again, NAFCU and its member credit unions remain hopeful that steps are taken to update and streamline existing regulation before new regulation is simply pushed through and layered on top of it.

Cost-Benefit Analysis

One thing that is unfortunately missing from far too many regulations and laws is a robust cost-benefit analysis for the changes that are sought. This is particularly important for not-for-profit credit unions. Simply put: Are the benefits to the consumer greater than the cost of compliance?

Federal agencies are required to conduct cost-benefit analysis before they issue certain proposed or final rules. These requirements have been added incrementally by various statutes and executive orders over the past 50 years. The elements of analysis usually include some or a combination of the following: quantitative and qualitative estimates of costs and benefits, effects on the national economy, consideration of a range of alternatives, selection of the alternative that is least costly, most cost-effective, or least burdensome, or an explanation of why that alternative was not selected.

Many of the current requirements have substantial exclusions and exceptions, giving federal agencies considerable discretion to decide whether an analysis is required. For example, some requirements do not apply to rules that are issued without a prior notice of a proposed rulemaking, and agencies can avoid regulatory flexibility analyses if they certify that their rules do not have a significant economic impact on a substantial number of small entities. At NCUA, only credit unions under $10 million in assets are currently considered small entities. NCUA should consider raising the small entities benchmark. For example, the CFPB uses $175 million for the Small Business Regulatory Enforcement Fairness Act review panels.

The number of economically significant regulations, those costing the regulated community more than $100 million or having a significant adverse impact on competition, employment or productivity has increased substantially.

Conclusion

While credit unions were not the problem, the Dodd-Frank Act impacts credit unions in many ways. While the interchange provision has some of the biggest impact, the greatest impact will likely come from the ever increasing burden of new regulations emerging as a result of the Dodd-Frank Act, whether from the CFPB or functional regulators. Congress must continue vigorous oversight and look for ways to act on regulatory relief.

Regulators must also accept responsibility in this regard, and the newly created FSOC should make regulatory coordination part of its focus.

This is critical because every dollar spent on compliance, whether stemming from a new law or outdated regulation, is a dollar that could have been used to reduce cost or provide additional services or loans to members. This has a real impact on the small businesses in our local communities we are counting on to create jobs and economic growth. NAFCU continues to urge

Congress to move forward with legislation that will provide regulatory relief from outdated laws and regulations for credit unions.

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.

Attached:

6.27.2012 letter from NAFCU President and CEO Fred Becker to Treasury Secretary Geithner re: FSOC’s Role to Reduce Regulatory Compliance Buren at Credit Unions

3.2.2012 letter from NAFCU President and CEO Fred Becker to Monica Jackson/ CFPB re: Docket No. CFPB – 2011-0039/ Streamlining Regulations

NAFCU

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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

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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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NAFCU | Your Direct Connection to Education, Advocacy & Advancement

March 2, 2012

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1801 L Street, NW
Washington, D.C. 20036

RE: Docket No. CFPB–2011–0039

Dear Ms. Jackson:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents federal credit unions, I am writing to you regarding the Consumer Financial Protection Bureau's (CFPB) request for comment on regulatory streamlining. NAFCU very much appreciates the CFPB's early identification of the critical importance of streamlining regulations.

Over the last several years, there has been an ever-increasing regulatory burden for credit unions, particularly in the area of lending. In general, credit unions are smaller institutions, with lesser economies of scale; consequently, these constant changes have a more significant impact on their ability to serve their member-owners. Further, given that every dollar a credit union must pay starts with a member at a teller window, the changes have a very direct impact on credit union member-owners. There are a number of steps the CFPB can take to streamline and simplify the complex regulatory framework for credit unions. Following is a detailed explanation of several regulatory issues that NAFCU urges the CFPB to simplify.

Regulation Z

There are several small issues with Regulation Z, primarily relating to mortgages and credit cards, which could be improved with relatively modest changes.

Mortgages

Lender Cost of Funds

The CFPB should use its authority to eliminate the "lender cost of funds" disclosure that the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the Dodd-Frank Act) requires on mortgage disclosures. This is one of NAFCU's top priorities for the streamlining process as the disclosure does not provide any useful information and, in some cases, may be misleading. The implication of the disclosure is that the lender is making a profit spread between the cost of funds and the rate the borrower is paying. Important components that make up the ultimate price, such as interest rate risk and credit risk are ignored by the disclosures and consequently will be ignored by borrowers. The purpose of the Know Before You Owe project is to simplify and clarify disclosures for consumers. Instead, this disclosure provides consumers additional information that they likely will not understand and that has only a tangential bearing on the cost of the mortgage.

Further, in the context of mortgage loans sold into the secondary market, the disclosure is also potentially misleading. The mortgage lender likely does not know the cost of funds for the investor at the time these disclosures are made. Consequently, the best that could be accomplished in this context is for the Bureau or some other entity to publish an average rate on a daily, weekly or monthly basis that could be used to make the disclosure. Providing borrowers an average rate that may be days or weeks old, we believe, detracts from the purpose of the disclosures.

NAFCU recommends the CFPB consider using its authority under section 104 of the Truth In Lending Act (TILA), which enables the Board to exempt disclosures that "are not necessary to carry out the purposes" of the Act. Alternatively, the Bureau could use its exemption under section 105, which permits the Board to exempt statutorily required disclosures based on a five factor balancing test. Either exemption would apply to this proposed disclosure, which provides little if any value and only confuses a process which the agency's Know Before You Owe project is designed to clarify.

Waiting Period after Re-disclosure

The agency should also make changes to the rules implementing the Mortgage Disclosure Improvement Act (MDIA). Lenders are currently required to provide early disclosures three days after a mortgage application is received. Lenders must also provide updated or final disclosures at settlement. If the annual percentage rate (APR) changes beyond a certain threshold or if certain fees exceed a threshold, new disclosures must be provided. Further, section 1026.19(1)(2)(ii) requires that at least three days pass between re-disclosure and closing. Truth in Lending (Regulation Z), 76 Fed. Reg. 79,801 (proposed Dec. 22, 2011) (to be codified at 12 C.F.R. pt. 1026). NAFCU recommends the CFPB modify the three day waiting period. While well intentioned, the three day minimum is potentially harmful and, at the very least, bothersome to borrowers who understand the changes and want to move forward with closing the loan. The regulation only allows for a waiver of the waiting period if waiting will create a bona fide personal financial emergency for the borrower; however, the only example the regulation provides that would qualify is if the borrower will lose his home to foreclosure if funds are not released. Id. at 79,986. There are a number of other potential scenarios that may create such a hardship but lenders are wary of moving forward without more guidance. Further, there are dozens of other legitimate reasons for a borrower to wish to move forward with the loan that certainly fall short of a "bona fide personal financial emergency."

NAFCU recommends the agency consider three different options. First, if the agency insists on keeping a non-negotiable, minimum wait time, it should allow borrowers to move forward after one business day. One business day would still provide borrowers sufficient time to examine the changes. Further, the rule could still allow borrowers to have up to three business days after re-disclosure to examine the documents if they so choose. Permitting a minimum one day wait would minimize the hardships for people who have compelling reasons to move forward but who fail to qualify for the bona fide personal hardship exception. Additionally, a one day minimum period would still ensure that borrowers would have time to consider the changes on their own and would protect against borrowers being pressured into the change at closing. Second, the CFPB should consider relaxing the waiver requirement and allowing borrowers to waive the three day period at their discretion. Third, the agency should, at the least, provide more guidance as to what constitutes a bona fide personal financial emergency.

Credit Cards

Ability to Repay and Non-working Spouses

The CFPB should modify one aspect of the existing rule regarding the ability to repay a credit card account. Currently Regulation Z does not permit a credit card issuer to consider household income when determining whether a consumer has the ability to repay a credit card account. 12 C.F.R. § 1016.51. Requiring that issuers determine the ability to repay based solely on personal income, even in cases where there is sufficient household income to make payments is shortsighted and disproportionately impacts now-working spouses. This rule serves little practical purpose in terms of ensuring the debt will be repaid. In cases where there is a steady household income, creditors should be permitted to consider that income, rather than only the applicant's personal income. The applicant presumably has access to the household income to pay the credit card bill and the inquiry should end there. The rule forces non-working applicants to seek the spouse's approval for any extension of credit.

The rule is also incongruent. The rule only permit lenders to consider personal income, while at the same time requiring consideration of all household liabilities when making the determination of whether the debt is likely to be repaid. In addition to this aspect of the proposal being inconsistent, it, again, will only exacerbate the negative impact on non-working spouses. Issuers should be permitted to take into consideration household income on which the applicant states he or she can rely. The current rule negatively impacts all non-working spouses and greatly reduces the availability of credit for all non-working spouses.

Reevaluation of Rate Increases

The CFPB should consider modifying 12 C.F.R. § 1026.59, which requires credit card issuers to reevaluate rate increases. If a card issuer increases the APR on the account for virtually any reason, it is then required to reevaluate the APR at least every six months for an indefinite period of time. NAFCU understands the purpose behind the requirement, however, to require reevaluations every six months indefinitely for *all* APR increases is unduly burdensome. Under the current rule, a cardholder's credit score could drop by 50 percent (or more) and the credit card issuer would still be required to reevaluate the APR every six months as long as the account is active. This requirement is problematic for two reasons. First, it is a waste of resources as the issuer is required to reevaluate an account every six months when there is very little possibility that the APR will be reduced in the near future. Second, the requirement creates a perverse incentive as it drives up the cost on already risky accounts, which encourages lenders to close the account rather than work with the borrower. Accordingly, the CFPB should terminate the obligation in instances where the cardholder's credit score has dropped dramatically. This change is all the more reasonable given that most issuers will review a consumer's account upon request.

If a cardholder suffers a decrease in credit score of 5 percent, for example, it will take him a considerable amount of time to repair his credit to the point that he is eligible for the initial APR he received prior to his score decreasing. There is no benefit to consumers in requiring card issuers to reevaluate accounts every six months given the length of time it will likely require to repair the credit score. There are, however, considerable costs involved for the institution in reevaluating each account every six months. Terminating the obligation in instances where the cardholder's credit score has dropped dramatically is a reasonable way in which to balance the institution's costs against the consumer protection concerns advanced in the *Credit Card Accountability, Responsibility and Disclosure Act* (CARD Act). Further, the credit card market is highly competitive and it will likely ensure that consumers who are able to quickly repair their credit will be able to take advantage of better rates. Consumers who suffered a credit problem and have since repaired that problem will undoubtedly receive solicitations at a better rate if their current card issuer refuses to lower the APR. Indeed the credit card market is one area in which there are virtually no barriers to a consumer moving from one company to another if a better price is offered. NAFCU understands the need for consumer protection and government oversight. However, the CFPB should set some limits on the reevaluation requirement in cases where a borrower has suffered a serious decline in creditworthiness.

NAFCU urges the CFPB to alter the rules regarding household income and to simplify the reevaluation requirement in cases where a cardholder's credit score has dropped significantly.

Annual Statement of Billing Rights

The CFPB should eliminate the requirement that lenders provide borrowers an annual statement regarding their billing rights, as required by 12 C.F.R. § 1026.9. Institutions are already required to disclose all relevant information regarding the consumer's billing rights during the application and account opening process. Institutions should only be required to send an updated statement if the policy has changed. Further, these statements can be made available online and in branches and would eliminate this costly and generally useless burden.

The Annual statement of billing rights is one of three annual disclosures (privacy policies and error resolution policies are discussed below) that institutions must regularly provide. Eliminating all three of these annual disclosures is a top priority for NAFCU. The CFPB indicted it will look at five primary factors in determining whether to adopt a proposed change. Those factors are:

- The potential benefits and costs of the proposed change for consumers and regulated entities;
- The likelihood that the Bureau would be able to achieve benefits consistent with the underlying statute;
- The speed with which the public would realize the benefits;
- The governmental and private resources it would take to realize the benefits; and
- The state of the evidence with which to judge the previous four factors.

In the case of all of the annual disclosures, the benefit to regulated entities is significant as they would save considerable amounts of time and money printing and sending the annual disclosures. The change could be made consistent with the underlying statute. Further, the CFPB has considerable authority to implement TILA as it sees fit, if certain disclosures or requirements are redundant or unnecessary. The benefits would be realized immediately for financial institutions and would not require any governmental resources beyond changing the regulation. While the change may seem modest, it would save institutions a significant amount of money printing and sending the disclosures. Additionally, the change would free up valuable time for employees who would otherwise need to carry out the process. On balance, the factors heavily weigh in favor of eliminating the requirement.

General Concerns with Regulation Z

The CFPB specifically asked if the transaction threshold for coverage under Regulation Z should be increased. Currently, lenders that make twenty-five or fewer non-home secured loans a year are not covered by Regulation Z. Similarly, lenders that make five or fewer home secured mortgages per year are not covered by the rule. NAFCU recommends increasing the threshold exemption to 50 loans per year for all loan types.

Additionally, for the special rules for private student loans, NAFCU recommends a similar exemption. Specifically, a lender should not be required to comply with the existing rules for private education loans included in 12 C.F.R. §§ 1026.46-50 unless it makes at least fifty private student loans per year. The disclosures required for private student loans are lengthy and complicated. Further, the rule is so broad that virtually any loan that a borrower intends to use for education purposes is subject to the rule. Consequently, some lenders have chosen not to extend credit if the loan might be construed as a private education loan as the costs of compliance outweigh the income that can be derived from extending a small number of covered loans. Accordingly, NAFCU recommends an exemption from the requirements if a lender makes fewer than fifty private student loans per year.

Regulation E

ATM Fee Disclosure

NAFCU's top priority is eliminating the redundant and unnecessary requirement that automated teller machine (ATM) operators place a fee disclosure notice *on* the ATM, as required by 12 C.F.R. § 1025.16(c)(1). The requirement is outdated, unnecessary and has spawned a number of frivolous lawsuits. Plaintiffs have filed suit claiming the disclosures are not large enough, despite the fact that the statute and regulation do not contain size requirements and only state that the disclosure must be conspicuous. Further, it is impossible for ATM operators to ensure compliance as the sign on the ATM can simply be removed or obscured.

All ATMs include a fee disclosure on the screen during the transaction and provide consumers an opportunity to terminate the transaction without paying any fee. The on-screen disclosure should be sufficient to notify consumers. The utility of the physical sign disclosure is all the more questionable since that disclosure must only state that there may be a fee, but not the actual amount of the fee.

Accordingly, NAFCU has two recommendations. First, NAFCU encourages the CFPB to eliminate the disclosure requirement included in 12 C.F.R. 1025.16(c)(1). While this disclosure is required by statute under 15 U.S.C. § 1693b(d)(3)(A)(i), the statute also provides the CFPB authority to prescribe regulations that "contain such classifications, differentiations, or other provisions" that "provide for such adjustments and exceptions for any class of electronic fund transfers…as in the judgment of the [agency] are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith." Id. at § 1693b(c). The broad authority accorded the CFPB is sufficient to allow an exception for signs located on ATMs. The requirement is duplicative at best as more detailed on-screen disclosures are provided on every ATM. Consequently, an exception would not undercut the consumer protections provided by the statute. Alternatively, if the CFPB refuses to eliminate the requirement, it should consider adding an additional provision to the regulation that holds harmless an ATM operator that can show it did affix a sign to an

ATM. While this option is not as helpful, it would be useful in cases where a vandal or prospective litigant removes the disclosure from an otherwise compliant ATM.

The factors the CFPB will use in determining what proposal to adopt all weigh in favor of eliminating this requirement. The potential costs and benefits for consumers and regulated entities weigh heavily in favor of eliminating the provision. Not only does the disclosure provide little, if any, benefit, it has grown increasingly costly for ATM operators as a result of litigation. In the case of not-for-profit, member owned credit unions; these costs are passed on directly to the member-owners. As discussed above, the statute provides the CFPB considerable authority to make adjustments as it sees fit to effectuate the act. The benefits would be realized immediately as ATM operators would not need to contend, going forward, with frivolous lawsuits spurred by an out of date consumer protection requirement that provides consumers little in the way of actual protection. There would be virtually no governmental or private resources required to realize the benefits. Accordingly, the CFPB should eliminate this requirement.

<u>Account Truncation</u>

NAFCU recommends the CFPB allow financial institutions to truncate account numbers in some cases. Regulation E requires a periodic statement for accounts from which electronic fund transfers may be made. 12 C.F.R. § 1005.9(b). Practically speaking, any checking and savings account falls under the regulation's coverage. Further, § 1005.9(b)(2) requires the periodic statement to include the account number. NAFCU recommends permitting truncation of the account number on the periodic statement. Truncating the account number is a useful way to help combat fraud and identity theft. Indeed, § 1005.9(a) specifically allows for truncation to as few as four digits for receipts at ATMs or other electronic terminals. Understandably, there is a heightened concern that ATM receipts will be quickly discarded in a public place. Periodic statements are, perhaps, less likely to be discarded in a public place, nonetheless, allowing for truncation would help protect consumers by minimizing fraud risks. There is little, if any, reason not to allow truncation in this instance.

<u>Annual Statement Regarding Error Resolution</u>

Regulation E currently requires an annual notice concerning error resolution. The CFPB should eliminate this requirement. Institutions are already required to provide the notice at account opening. Institutions should only be required to send an updated error resolution notice if the institution's policy has changed. Error resolution policies are generally available at branches and online and the CFPB could require the document be made available online in place of the current requirement. Requiring institutions to mail the same policy year after year serves little benefit. Indeed many consumers likely assume the disclosure means there has been some change to the policy. NAFCU recommends the agency eliminate the requirement to send error resolution policies every year if the policy has not changed. For all the same reasons discussed above in the section regarding the annual statement of billing rights, NAFCU believes the CFPB's factors for consideration weigh in favor of making this change.

Regulation P

The agency should also eliminate the requirement that financial institutions send customers annual privacy notices. This requirement is included in 12 C.F.R. § 1016.5. Again, institutions are already required to provide the privacy notice at account opening. The CFPB should eliminate the annual requirement and instead only require a notice after account opening if the institution's privacy policy has changed. Privacy policies are also generally available at branches and online. Requiring institutions to mail the same privacy policy year after year serves little benefit. NAFCU recommends the agency eliminate the requirement for annual privacy policy disclosures in cases where the policy has not changed. For all the same reasons discussed above in the section regarding the annual statement of billing rights, NAFCU believes the CFPB's factors for consideration weigh in favor of making this change.

Regulation C

Under Regulation C, institutions that refinance a single loan in a calendar year must file a Home Mortgage Disclosure Act (HMDA) report. NAFCU recommends instituting a minimum threshold of at least fifty refinance transactions before an institution is subject to the rule. A threshold of fifty would make the rule consistent with Regulation Z, without undercutting the policy rationale of HMDA. Institutions that refinance fewer than fifty transactions per year are arguably not even offering refinancings in the normal course of business. An institution that extends fifty or fewer such transactions is likely only doing so as an accommodation to existing customers. Granted, a threshold exemption will result in a small number of loans going unreported. However, Regulation C will still capture the vast majority of all mortgage loans and refinancing transactions. Further, the very small cost of slightly fewer reporting entities is outweighed by the fact that these entities are likely more willing to extend credit for a refinancing on a case-by-case basis if they can do so without automatically becoming subject to the HMDA reporting requirements.

The agency should also alter the requirement for lenders to guess an applicant's race or natural origin. Currently, if an applicant declines to answer the question, the loan officer is required to provide his or her best guess based on observation or the applicant's surname. Given the breadth and depth of data gathered under HMDA, it does not seem necessary to require lending officers to report their educated guesses. Further, many applicants may find such a guess offensive. Simply put, there is sufficient data to further the goals of HMDA without forcing lending officers to guess the race or national origin of applicants.

Regulation V

Regulation V, which implements the *Fair Credit Reporting Act* (FCRA) requires lenders making firm offers of credit to include certain opt-out disclosures. Specifically, 12 C.F.R. § 1022.54(c)(1) requires a "short notice" regarding opt-out rights. Additionally, 12 C.F.R. § 1022.54(c)(2) requires a "long notice" that includes some of the same information included in the short notice and some additional information. NAFCU recommends streamlining the notices and permitting institutions to provide a single disclosure.

It would also be helpful if the CFPB streamlined and simplified the adverse action notices required under Regulation B and the very similar risk-based pricing notices required under Regulation V. The FCRA and the *Equal Credit Opportunity Act* (ECOA) have virtually identical adverse action notice requirements. In addition, the FCRA has a very similar, but different, risk-based pricing notice requirement. Further complicating the issue, the FCRA's adverse action notice requirements have no implementing regulation. In order to comply with the FCRA's adverse action notice, creditors may use the model forms included in the Board's Regulation B, which implements the ECOA. The rest of the FCRA, however, is implemented through Regulation V.

What's more, the adverse action notice required by Regulation B and the risk-based pricing notice required by Regulation V are virtually identical and are given under similar – but not the same – circumstances. An "adverse action" notice is given if the consumer was denied credit or there was a change in terms of an existing credit arrangement. A risk-based pricing notice is provided to a consumer that receives credit, based in whole or in part on his credit score, on terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers.

The policy underlying the risk-based pricing notice is identical to the policy underlying adverse action notices (to inform consumers that lenders – or others – are examining their credit history). The content of the two different disclosures is virtually identical. The circumstances under which the disclosures must be made are very similar. Yet, lenders must look to two different regulations to determine how to comply. Further complicating the matter is that the Federal Reserve Board chose to implement most of the FCRA through Regulation V but chose to implement one discrete section (the adverse action notice requirement) through Regulation B.

This is a case where two closely linked issues that had the potential to be confusing have, indeed, grown incredibly complex as a result of the way in which the regulations were implemented. Understandably, some of the issues are a result of the way in which the underlying statutes were written. This is, however, an issue where the CFPB could simplify matters for financial institutions without any substantive change to the protections afforded consumers. NAFCU is not seeking fewer notices or less detailed disclosures. Rather, we only ask that the CFPB reconsider the way in which these closely related statutes are implemented and re-write the regulations in a way that is simple and straightforward.

Conclusion

NAFCU appreciates the opportunity to provide input regarding regulations that can be modified or streamlined, and we very much appreciate the CFPB's decision to make this one of the first items on its regulatory agenda. Credit unions have been forced to contend with a significant number of regulatory changes over the last several years, particularly in regards to TILA and Regulation Z. We are hopeful that the CFPB will move forward and eliminate some of the less useful, redundant or unnecessary provisions in the regulations that it oversees. 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