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TESTIMONY

OF

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ON BEHALF OF
THE CREDIT UNION NATIONAL ASSOCIATION

BEFORE THE
HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

HEARING ON
EXAMINING REGULATORY RELIEF PROPOSALS FOR COMMUNITY FINANCIAL INSTITUTIONS, PART II

JULY 15, 2014

Testimony of
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President and Chief Executive Officer
Wright-Patt Credit Union
On Behalf of the
Credit Union National Association
Before the
United States House of Representatives
Committee on Financial Services
Subcommittee on Financial Institutions and Consumer Credit
Hearing on
Examining Regulatory Relief Proposals for Community Financial Institutions, Part II
July 15, 2014

Chairman Capito, Ranking Member Meeks and members of the Subcommittee, thank you very much for the opportunity to testify at today's hearing. My name is Doug Fecher, and I am President and Chief Executive Officer of Wright-Patt Credit Union in Beavercreek, Ohio. Wright-Patt is a federally-insured, state chartered credit union with total assets of $2.8 billion, serving more than 279,000 members. The majority of these members live and work in the following Ohio counties: Greene, Montgomery, Butler, Hamilton, Champaign, Miami, Darke, Warren and Franklin. I am testifying today on behalf of the Credit Union National Association (CUNA), the national trade association for America's credit unions, representing 6,600 state and federally chartered credit unions and their 99 million members.

Nearly two years ago, I had the privilege of testifying before the Committee on Oversight and Government Reform at a hearing exploring whether financial regulation was restricting access to credit. I say now what I said then: *Credit unions face a crisis of creeping complexity with respect to regulatory burden. It is not just one new law or revised regulation that challenges credit unions, but the cumulative effect of all regulatory changes. The frequency* *with which new and revised regulations have been promulgated in recent years and the complexity of these requirements is staggering.*

Two years later, the situation has not improved; instead, it is worse. Since 2008, CUNA estimates that credit unions have been subjected to more than 180 regulatory changes from at least 15 different federal agencies.

The burden of complying with ever-changing and ever-increasing regulatory requirements is particularly onerous for smaller institutions, like credit unions. Although my credit union, at $2.8 billion, is a large credit union, we are a small financial institution. In fact, the combined assets of the entire credit union system are smaller than those of each of the largest four banks in the United States.

When a regulation is changed, there are certain upfront costs that must be incurred no matter the size of the institution: staff time and credit union resources must be applied in determining what is necessary in order to comply with the change; forms and disclosures must be changed; data processing systems must be reprogrammed; and staff must be retrained. It also takes time to discuss these changes with credit union members, and at times members get frustrated because of the change.

Because most compliance costs do not vary by size, regulatory burden is proportionately greater for smaller institutions than for larger institutions. If a credit union offers a service, it has to be concerned about complying with virtually all of the same rules as a larger institution, but they have no choice but to spread those costs over a much smaller volume of business and have fewer human resources available to implement the changes. Today there are approximately 800 credit unions operating in the U.S. with one or fewer full-time equivalent employees. Over 30% of all credit unions operate with three or fewer full-time equivalent employees and just under 45% operate with five or fewer full-time equivalent employees.

Not surprisingly, smaller credit unions consistently say that their number one concern is regulatory burden. Anecdotally, many of these folks tell us they put in 70- and 80-hours a week trying to keep up with regulations and the constant barrage of regulatory changes. Difficulties in maintaining high levels of member service in the face of increasing regulatory burden are undoubtedly a key reason that roughly 300 small credit unions merge into larger credit unions each year.

Every dollar a credit union spends complying with these changes is a dollar that is not spent to the benefit of credit union members. Because credit unions are member-owned financial cooperatives, the entire cost of compliance is ultimately borne by credit union members. Greater compliance costs reduce net income, which is credit unions' only source of net worth.

Without question, regulatory burden is one of the greatest threats to community based financial institutions. It is driving consolidation within both the credit union and small bank sectors, leaving consumers with fewer choices in the financial services marketplace. That is why today's hearing is important – the legislation under consideration will help improve the situation for credit unions and other financial institutions. These bills do not represent a complete solution to the challenges we face, but they are a small step in the right direction. We are pleased to share our views on these bills and also to raise additional concerns with respect to regulatory burden.

The affinity for community based financial institutions is strong among consumers and policymakers. Consumers and small businesses like the familiarity of and the service they receive from locally based financial institutions. Across the country, credit unions are a critical component of the fabric of the communities they serve. However, if Congress wants credit unions and other small community based financial institutions to survive, the never-ending wave of regulatory changes must end. Through the laws it enacts, Congress must do a better job to differentiate between credit unions and community banks that work hard to help consumers, and other financial institutions that seek to maximize profits in ways that at times take advantage of consumers. The oversight of those writing the rules with which credit unions and small banks must comply needs to intensify. When regulation makes it too expensive for small financial institutions – credit unions and community banks – to offer products and services to their members or customers, consumers are not being protected – they are being harmed.

Regulatory Relief Legislation

We have been asked to provide our views on the following bills: H.R. 3240, the *Regulation D Study Act*; H.R. 3374, the *American Savings Promotion Act*; H.R. 3913, a bill to amend the Bank Holding Company Act of 1956 to require agencies to make considerations relating to the promotion of efficiency, competition and capital formation before issuing or modifying certain regulations; H.R. 4042, the *Community Bank Mortgage Servicing Asset Capital Requirements Study Act*; H.R. 4626, the *SAFE Act Confidentiality and Privilege Enhancement Act*; and, H.R. 4986, the *End Operation Choke Point Act of 2014*.

In addition, we have been asked to provide our views on three discussion drafts. These include a bill that would require the Office of Financial Research to consult with federal financial regulators, and incorporate their recommendations before publishing their report and taking public comments; a bill to require federal financial regulators to establish a threshold at or below which a certified or licensed appraiser is not required to perform appraisals in connection with federally regulated transactions; and a bill to allow State bank supervisors and State non-bank supervisors be considered "covered agencies" when sharing information with another covered agency or any other federal agency without waiving any privilege applicable to the information.

H.R. 3240 – The Regulation D Study Act

H.R. 3240, bipartisan legislation introduced by Representatives Robert Pittenger (R-NC) and Carolyn Maloney (D-NY), directs the Government Accountability Office (GAO) to study the impact of the Federal Reserve Board's monetary reserve requirements, implemented through Regulation D, on depository institutions, consumers and monetary policy. Credit unions became subject to monetary reserves in 1980.

Regulation D impacts credit union members by limiting the number of automatic withdrawals from a member's savings account to six transactions per month. The impact of this limit is to unnecessarily cause credit union members to overdraft their checking accounts when a debit draws the checking account balance below zero and the member has already had six automatic transfers during the month. When this happens, members who may have the funds in a savings account to cover the debit are hit with nonsufficient fund fees (NSF) from their financial institution and, when a check is involved, a returned check fee from the merchant. This is not a result of an overdraft protection program – this happens because of a regulatory cap on automatic transfers. It is difficult for credit union members affected by the cap to understand that this is out of the control of the credit union when the funds to cover the debit are sitting in their account at the credit union.

We would like to see this cap increased or eliminated altogether, but we understand that one of the reasons the regulation is in place is because the Federal Reserve uses it as a tool to conduct monetary policy. So, as a first step toward the possible change in this cap, the legislation directs the Government Accountability Office (GAO) to study the issue so that more information will be available for Congress to determine whether an increase of or the elimination of this cap would substantially affect their ability to conduct monetary policy.

Specifically, H.R. 3240 directs the GAO to examine and report within one year of enactment on the following topics: an historic overview of how the Federal Reserve has used reserve requirements to conduct monetary policy; the impact of the maintenance of reserves on depository institutions, including the operations requirements and associated costs; the impact on consumers in managing their accounts, including the costs and benefits of the reserving system; and, alternatives to required reserves the Federal Reserve may have to effect monetary policy. The bill also directs the GAO to consult with credit unions and community banks.

This bill is timely. According to former Federal Reserve Chairman Ben Bernanke, "…reserve balances far exceed the level of reserve requirements and the level of reserve requirements thus plays only a minor role in the daily implementation of monetary policy."[1] A GAO study will allow an objective assessment of whether the rarely changed monetary reserves imposed on depository institutions and consumers are necessary in order for the Fed to implement monetary policy in the 21st century. CUNA strongly supports this bill.

H.R. 3374 – the American Savings Promotion Act

H.R. 3374, the *American Savings Promotion Act* was introduced by Representatives Kilmer (D-WA) and Cotton (R-AR). This legislation seeks to offer

[1] Letter from Federal Reserve Chairman Ben Bernanke to Representative Robert Pittenger, September 20, 2013.

parity to financial institutions wishing to offer raffle based prize-linked savings accounts to their members or customers.

Nine states currently allow financial institutions to offer prize-linked savings accounts. Credit unions in four states (Washington, Michigan, North Carolina and Nebraska) participate in the "Save to Win" program, which offers credit union members a chance to win prizes through a raffle for every $25 deposited into a special savings account. These credit unions have seen positive results when offering these accounts to their members. To date, members participating in "Save to Win," have saved tens of millions of dollars. Most of these savings have come from first-time members and under-banked members.

The National Credit Union Administration (NCUA) currently authorizes federally chartered credit unions to offer raffle based activities, such as prize-linked savings accounts.[2] However, current Federal law prohibits other types of federally chartered financial institutions from offering raffle based accounts. H.R. 3374 would remove this Federal prohibition by making an exception for savings promotion raffles. CUNA is supportive of removing this barrier for federally chartered institutions, leaving the question to the States for the purposes of State chartered institutions.

H.R. 4042 – the Community Bank Mortgage Servicing Asset Capital Requirements Study Act of 2014

H.R. 4042, the *Community Bank Mortgage Servicing Asset Capital Requirements Study Act of 2014*, has been introduced by Representatives Luetkemeyer (R-MO), Perlmutter (D-CO), Cotton (R-AR), Lucas (R-OK) and Womack (R-AR), and directs the Federal banking agencies to conduct a study of

[2] 12 CFR 721.3(h)

appropriate capital requirements for mortgage servicing assets for nonsystemic banking institutions.

Earlier this year the NCUA issued a proposed rule revising their risk-based capital standards for credit unions. The proposed rule would implement Basel-style capital standards on "complex" credit unions. As discussed in greater detail below, CUNA has significant concerns with the proposed rule and has asked the NCUA to withdraw it. Of particular note for purposes of H.R. 4042 are the risk weightings that NCUA has proposed for mortgage servicing rights (MSRs). The proposed rule includes a 250% risk weighting on MSRs. We believe this level would be punitive and unnecessary, and we have recommended it be reduced to 100%, which is similar to the level in the Basel III requirements for small banks.

An active market exists for MSRs, which allows for the establishment of current market values of such rights during changing economic and interest rate environments. This allows for frequent "marking-to-market" of servicing rights, which prevent losses from accumulating.

We certainly understand the concerns expressed by the banking trade associations with respect to capital requirement related to mortgage servicing rights, because we have similar concerns regarding the much more stringent requirement that NCUA has proposed for credit unions. Further, we note that H.R. 4042 was introduced prior to the publication of NCUA's proposed rule in the Federal Register, and the sponsors could not have contemplated the need to include NCUA as part of this legislation. Therefore, we request the Subcommittee amend H.R. 4042 to include NCUA among the agencies conducting the joint study and to delay the implementation of the NCUA's proposed rule until an appropriate period of time after the study has been completed. In any case, credit union capital requirements on MSRs should be no higher than those imposed on small banks.

H.R. 4626 – the SAFE Act Confidentiality and Privilege Enhancement Act

H.R. 4626, the *SAFE Act Confidentiality and Privilege Enhancement Act*, introduced by Chairman Capito (R-WV), would allow state and federal regulatory officials with mortgage or financial services industry oversight authority access to any information provided to the Nationwide Mortgage Licensing System and Registry without the loss of confidentiality protections provided by federal and state laws. We support the legislation as a technical correction to Section 1512 of the SAFE Act, which currently only grants such access to mortgage industry regulators.

H.R. 4986 – the End Operation Choke Point Act of 2014

H.R. 4986, *the End Operation Choke Point Act of 2014*, has been introduced by Representative Luetkemeyer (R-MO), and would amend the federal banking statutes in an effort to end a United States Justice Department investigation known as "Operation Choke Point."

The goal of Operation Choke Point is to deny businesses with a high risk of engaging in money laundering operations or predatory activity access to the banking system and the payment networks. According to the May 29, 2014, House Committee on Oversight and Government Reforms' staff report on Operation Choke Point, some of the targeted merchant categories associated with high-risk activity include: ammunition sales, coin dealers, credit repair services, dating services, debt consolidation services, home-based charities, escort services, fireworks sales, lifetime memberships, mailing lists, money transfer networks, online gambling, payday loans, telemarketing, and travel clubs.[3]

To be clear: we do not condone illegal or illegitimate business practices but this program raises serious constitutional issues. If not contained, it would divert credit unions even more from their mission and purpose of serving members. As CUNA and other financial services trade groups indicated in a joint statement to the House Financial Services Committee on April 8, 2014, "Operation Choke Point threatens to close access to the financial system to law-abiding businesses, because the mere prospect of an enforcement action is sufficient to cause financial institutions to restrict access to their payment systems to only established companies that present low risks. While preventing fraud is a top concern, it needs to be balanced with ensuring that businesses and consumers that operate in accordance with applicable laws can still access payment systems."[4]

H.R. 4042 would amend the appropriate federal banking statutes, including the Federal Credit Union Act, to bar regulators from prohibiting, restricting or discouraging insured depository institutions from serving entities that are licensed or authorized to provide products and services, is a registered money transmitting business or has a reasoned legal opinion that demonstrates the legality of the entity's business. We support what this legislation is trying

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[3] Staff Report of the Committee on Oversight and Government Reform. United States House of Representatives. "The Department of Justice's 'Operation Choke Point': Illegally Choking Off Legitimate Businesses?" May 29, 2014. 2. http://oversight.house.gov/wp-content/uploads/2014/05/Staff-Report-Operation-Choke-Point1.pdf.

[4] Statement of the Consumer Bankers Association, Credit Union National Association, Electronic Funds Transfer Association, The Electronic Transfer Association, Independent Community Bankers of America, National Association of Federal Credit Unions and Third Party Payment Processors Association before the House Financial Services Committee Hearing entitled, "Who's in Your Wallet: Examining How Washington Red Tape Impairs Economic Freedom." April 8, 2014. 6.

to accomplish, which is to prevent situations where financial institutions are used to police those whom they serve. We note that the legislation, as introduced, requires a technical correction on page 4, line 16, where the word “and” should be “or.” As the legislation works its way through the legislative process, we would be happy to work with the sponsors to perfect it.

Financial institutions should not be put in the position of policing those whom they serve. To the extent that regulation or law enforcement activity is designed to discourage legitimate businesses from accessing mainstream financial services, it is a disservice to these lawful businesses and could create a public safety issue.

Appraisal Discussion Draft

We support the goals of the “Access to Affordable Mortgages Act of 2014,” which would amend the Truth in Lending Act (TILA) to exempt certain higher-risk mortgages from property appraisal requirements. By providing an exemption from the *Truth in Lending Act* appraisal requirements for properties with transaction values of $250,000 or less for loans held on portfolio for at least three years, the bill would provide both regulatory relief to mortgage lenders as well as increase access to mortgage credit availability for borrowers purchasing lower cost dwellings. The bill would also amend the *Financial Institutions Reform, Recovery, and Enforcement Act of 1989* to exempt this same category of higher-risk mortgages from the standards prescribed by the federal interagency appraisal requirements, as long as such mortgage loans are held on a lender’s portfolio for at least three years. Again, the bill would allow credit unions that offer mortgage loans secured by covered properties to better serve their middle to lower income members.

Other Legislation

We have been asked to present our views on several other bills including, H.R. 3919, a bill to amend the Bank Holding Company Act of 1956 to require agencies to make considerations relating to the promotion of efficiency, competition and capital formation before issuing or modifying certain regulations; a discussion draft that would require the Office of Financial Research to consult with federal financial regulators, and incorporate their recommendations before publishing their report and taking public comments; and a discussion draft to allow State bank supervisors and State non-bank supervisors be considered "covered agencies" when sharing information with another covered agency or any other federal agency without waiving any privilege applicable to the information. These bills do not directly impact credit unions, and we have no position on them at the present time.

Additional Concerns

We greatly appreciate the Subcommittee's attention to the legislation on the roster of today's hearing; however, as we noted earlier in our testimony, these bills are not a complete solution to the challenges credit unions face in terms of regulatory burden; in fact, some of them would not directly impact credit unions. We would like to bring additional concerns to the attention of the Subcommittee.

NCUA's Proposed Rule on Risk-Based Capital

Earlier this year, NCUA issued a proposed rule related to risk-based capital standards for credit unions.[5] The agency has indicated that it was prompted to update its standards following a 2012 GAO study, a report from its

[5] Proposed rule on prompt corrective action; risk based capital (12 CFR Parts 700, 701, 702, 703, 713, 723 and 747) issued by NCUA on January 23, 2014. http://www.ncua.gov/Legal/Documents/Regulations/PR20140123PCA.pdf

Office of Inspector General and lessons learned from the financial crisis. CUNA is a strong, historic supporter of risk-based capital for credit unions, but we ardently oppose this proposal and have urged NCUA to withdraw it.

We believe that the proposed rule exceeds the NCUA's statutory authority under the *Federal Credit Union Act* in several areas. The *Federal Credit Union Act* directs the NCUA to establish risk-based net worth requirements for the purposes of determining whether a credit union is adequately capitalized; however, the proposed rule would impose a risk-based capital standard for the purposes of determining whether a credit union is well-capitalized. [6] Furthermore, the proposed rule would permit the NCUA to establish individual capital standards for credit unions on a case-by-case basis; our reading of the Federal Credit Union Act suggests that this is an authority that Congress has not conveyed to the agency, and it would be inconsistent with the recommendations of the Department of Treasury and the Governmental Accountability Office. [7,8] Credit unions face too many uncertainties already without having to contend with whether NCUA will impose additional capital beyond what they have planned to provide in order to meet specific risk-based requirements.

As we discuss in our comment letter, we have many other issues with the proposed rule. We object to the proposal's interest rate risk scheme, because it completely ignores liabilities. We also have expressed concern that the proposed rule discounts the 1% deposit credit unions place in the NCUSIF; and with the proposed rule's one-dimensional, asset-based definition of a "complex" credit union.

[6] 12 U.S.C. § 1790d(d).
[7] U.S. Treasury Report to Congress, Credit Unions, at 8 (December 1, 1997)
[8] GAO-12-247.

In addition, we believe the risk-weights in the proposed rule are misaligned given the *Federal Credit Union Act's* mandate that NCUA develop a system that takes into consideration the unique characteristics of the credit union system, and would have unnecessarily harsh consequences on credit unions, their members and communities. In many cases, the proposed risk-weights, including escalators for concentration risk, are substantially more stringent than similar risk-weights in the Basel III rules for small banks, even though credit union performance on these assets is generally stronger. If implemented as proposed, it would lead to a contraction in credit union leading, particularly mortgage lending and small business lending, at a time when the economy is recovering from a very significant financial crisis. The last thing we need during this fragile recovery is for regulators to make it more difficult for credit unions to lend to their members, but that would be an impact of the proposal.

In fact, the commentary accompanying the proposed rule significantly underestimates the impact of the proposal on credit unions, their members and the communities that they serve. NCUA indicates that less than 10% of covered credit unions would be affected by the proposal – only 189 would be reclassified from well-capitalized to adequately capitalized and only 10 would be reclassified to undercapitalized – and that these credit unions would be required to raise a total of $63 million of additional capital to become adequately capitalized, given no changes in their balance sheets.[9] This estimate ignores several operational realities. First, very few credit unions seek to maintain capital levels precisely at the required amount. They generally want to maintain a buffer so that they can manage unexpected changes in their balance sheets; and, their examiners

[9] 79 Fed. Reg. 11, 188.

generally prefer that they maintain the buffer. The NCUA estimate calculates only the amount that the reclassified credit unions would need to achieve the higher classification; it does not take into consideration the capital buffer that the credit unions would seek to maintain. CUNA estimates that these credit unions would need to raise a total of $480 million in additional capital to maintain their buffers.

NCUA's estimates also disregard the impact the proposal would have on the nearly 1,700 credit unions for which the proposed rule would increase the amount of capital required to be well-capitalized above the current level of 7% of total assets. A detailed analysis of the impact of the proposal on these credit unions is included in CUNA's comment letter, but suffice to say, on net, across all potentially affected credit unions, the total amount of capital necessarily to be well-capitalized would increase by $7.6 billion.[10] We conservatively estimate that this increase would compel credit unions to add an additional $3.5 - $4.5 billion in capital in an effort to maintain or manage buffers above the higher requirements.

In our comment letter, we urged NCUA to pursue risk-based capital standards as part of a multi-faceted capital reform strategy, which would include statutory capital reform. Representatives King (R-NY) and Sherman (D-CA) have introduced a bill, H.R. 719, the *Capital Access for Small Businesses and Jobs Act*. This legislation has the support of the NCUA Chairman and enjoys the cosponsorship by an additional 49 bipartisan members of the House of

[10] Letter from Bill Cheney, CUNA, to NCUA regarding the proposed rule on prompt corrective action; risk based capital issued January 23, 2014. 17-19. http://www.ncua.gov/Legal/CommentLetters/CLRisk20140528BCheney.pdf

Representatives.[11] It would be a good place to start the conversation regarding credit union capital reform.

CUNA also urged NCUA to undertake major improvements in the training of examiners to address deficiencies than have contributed significantly to the failures of credit unions. We also urged the NCUA to address a number of the proposed rule's deficiencies, including ones we have already identified in this testimony as well as the following additional deficiencies and others:

- There were 8,100 federally-insured credit unions at the start of the worst financial crisis in this nation's history. In total, only 25 of those deemed "complex" by the proposal failed. If in place at that time, the proposal would not have prevented any of those failures nor would it have significantly reduced losses to the National Credit Union Share Insurance Fund. It would have caused substantial overcapitalization of thousands of other healthy credit unions thus substantially reducing service to members when many needed it the most.
- The proposal does not reflect credit unions' historical financial performance including during times of severe financial market distress. NCUA cannot justify the proposal in light of the vigorous health of federally insured credit unions in general; and
- The overall negative impact of the proposal would be far greater than the agency has anticipated and would result in a much smaller credit union system over the long term.

Finally, we urged the NCUA to withdraw the proposal because, given the major weaknesses in the proposed rule—which would seriously constrict credit union growth and financial performance—we believe it would be far better to maintain the current risk-based rule than to move forward with the NCUA's proposed rule. If implemented without change, the proposed rule would doom credit unions to a marginal role in the financial marketplace without effectively achieving the objectives NCUA has identified. It would clumsily identify credit

[11] Letter from NCUA Chairman Debbie Matz to Representative Peter King. May 30, 2014. 3.

unions in need of additional capital at the expense of overcapitalizing many other well-managed credit unions. Member service and credit availability from credit unions would suffer, because credit unions will move away from decision making based on the best interest of the members and communities that the credit union serves and toward managing "capital at risk," as if they operated the same as a for-profit banking institution. Short of withdrawing the proposal, we have urged NCUA to reissue a revised proposal for comment.

For these reasons and others, the proposed rule has received a historic amount of interest from stakeholders. As noted above, CUNA expressed concerns to the agency in a comprehensive comment letter filed in May, as did Wright-Patt Credit Union.[12,13] These letters were among the more than 2,200 comment letters the agency received. We greatly appreciate the leadership of Representatives King (R-NY) and Ranking Member Meeks (D-NY) who organized a letter to NCUA which was signed by 322 other Members of the House of Representatives including most members of the Financial Services Committee.[14,15] We also appreciate the leadership of Chairman Hensarling and Chairman Capito who recently sent a letter to the NCUA on this matter. The level of continuing interest and concern regarding this proposed rule can be clearly appreciated through the stream of letters going from Capitol Hill to the

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[12] Letter from Bill Cheney, CUNA, to NCUA regarding the proposed rule on prompt corrective action; risk based capital issued January 23, 2014.
http://www.ncua.gov/Legal/CommentLetters/CLRisk20140528BCheney.pdf

[13] Letter from Doug Fecher, Wright Patt Credit Union to NCUA regarding the proposed rule on prompt corrective action; risk based capital issued January 23, 2014.
http://www.ncua.gov/Legal/CommentLetters/CLRisk20140513DFecher.pdf

[14] Comment letters received by NCUA regarding the proposed rule on prompt corrective action; risk based capital issued January 23, 2014.
http://www.ncua.gov/Legal/Regs/Pages/PR20140123RiskBasedCapital.aspx

[15] Letter from Representatives Peter King, Gregory Meeks and 322 Members of the House of Representative to NCUA regarding the proposed rule on prompt corrective action; risk based capital issued January 23, 2014.
http://www.ncua.gov/Legal/CommentLetters/CLRisk20140515Congress.pdf

NCUA urging them to take the concerns credit unions have with this proposal into consideration as the rule is finalized.

We commend the NCUA for its diligent effort to review these comments and to solicit additional feedback on the proposal through the establishment of a credit union advisory group, a series of listening sessions across the country and a continued willingness to meet with stakeholders to discuss ways to improve the rule. We look forward to sharing our views on this proposal with the newest member of the NCUA Board, J. Mark McWatters, after he is sworn into office later this month.

America's credit unions – since their inception – have been the model of risk management in the U.S. financial system. No other class of financial institution has been as resilient to risk as credit unions. The absence of a profit motive, a mission of service and a cooperative ownership structure, are all reasons for this performance. That fewer credit unions have failed throughout their history than any other types of financial institution is no accident – it is because credit unions are different.

NCUA should be encouraging credit unions to do more of what they do now to serve their members and communities—not limiting them so they can only do less. We strongly encourage the Subcommittee to continue to monitor this rulemaking, and exercise appropriate oversight of NCUA, to ensure that the rule that is finally implemented balances the best interests of members with the safety of the money they entrust to their credit union, and recognizes that credit unions are cooperative institutions formed to serve their members on a not-for-profit basis.

H.R. 4226 – The Credit Union Residential Loan Parity Act

We support H.R. 4226, the *Credit Union Residential Loan Parity Act*. This legislation, introduced by Representatives Royce (R-CA) and Huffman (D-CA), addresses a disparity in the treatment of certain residential loans made by banks and credit unions. When a bank makes a loan to purchase a 1-4 unit non-owner occupied residential dwelling, the loan is classified as a residential real estate loan; however, if a credit union were to make the same, it would be classified as a business loan and therefore would be subject to the cap on member business lending under the *Federal Credit Union Act*.

H.R. 4226 would amend the *Federal Credit Union Act* to provide an exclusion from the cap for these loans. In addition, H.R. 4226 would authorize NCUA to apply strict underwriting and servicing requirements for the loans.

Enactment of this legislation would not only correct this disparity but it would also enable credit unions to provide additional credit to borrowers seeking to purchase residential units, including low-income rental units. Credit unions would be better able to meet the needs of their members, if this bill was enacted, and it would also contribute to the availability of affordable rental housing. We encourage the Subcommittee to consider H.R. 4226 soon.

CFPB's Examination Thresholds

As the Subcommittee considers improvements and reforms to the *Dodd-Frank Wall Street Reform and Consumer Financial Protection Act*, we encourage the consideration of legislation to increase the threshold for CFPB examination from $10 billion to $50 billion in assets for credit unions, thrifts and banks and index that amount to take into account inflation.

Increasing this threshold would provide significant regulatory relief to the affected institutions and direct Bureau resources to the examination of the institutions that serve the greatest number of consumers. While this change would not significantly change the number of institutions and percentage of assets presently subject to examination by the Bureau, it would allow the Bureau to more efficiently use its examination resources in the coming years. The number of financial institutions approaching $10 billion in total assets is increasing. As these institutions cross the threshold, the Bureau will be required to spend more of its resources examining these newly covered institutions at the expense of other activities.

Institutions affected by this change would continue to be subject to the Bureau's rules and regulations, and they would be examined for compliance with these rules by their prudential regulator. In addition, the Section 1026 of the *Dodd-Frank Act* provides the Bureau authority to examine on a sampling basis credit unions, thrifts and banks for which it does not have examination authority and includes language directing coordination between the prudential regulators and the Bureau.

CFPB's Exemption Authority

As the Subcommittee considers additional ways to address the regulatory burden facing credit unions, we urge the Subcommittee to ask the Bureau to conduct a review of its regulations to identify and address outdated and unnecessary regulations with an eye toward reducing unwarranted regulatory burden, as directed by Section 1021(b)(3) of the *Dodd-Frank Act.*

Further, we ask the Subcommittee to encourage the Bureau to use the exemption authority Congress conveyed to it under Section 1022(b)(3) of the *Dodd-Frank Act* with alacrity. We believe the Bureau has more authority than it has been exercising to extend relief to credit unions and others from certain compliance responsibilities. We are very concerned that the Bureau seems to be picking and choosing when to use the statutory flexibility Congress provided to the Bureau in the *Dodd-Frank Act.* It is important that Congress aggressively urge the Bureau to utilize the exemption clause so that the weight of compounding regulations that are intended for abusers and the largest of financial institutions do not overburden credit unions and other smaller financial institutions. The Bureau's failure to use this authority as Congress intended may ultimately drive good actors out of markets, forcing consumers to do business with those entities that remain – we have seen this already in the remittance transfer market. We encourage Congress to urge that the Bureau exercise its authority as broadly as possible to protect credit unions from burdensome overregulation, which ultimately impacts consumers. Further, CUNA has urged the Bureau to include an analysis of its exemption authority with every proposal and final rule so that every time the Bureau considers a new regulation, it will also consider whether institutions such as credit unions that are already heavily regulated should be exempted. The default should be exclusion unless an actual need is demonstrated.

Along these lines, we strongly encourage the Subcommittee as it considers additional regulatory relief legislation to consider ways to more directly exempt credit unions and small banks from the Bureau's rulemaking.

Impact of Unreasonable Effective Dates on Credit Unions

Credit unions are also facing what seems to be an emerging regulatory problem with unreasonable effective dates. In January 2014, a vast number of mortgage lending regulations required under the *Dodd-Frank Act* went into effect. The Consumer Financial Protection Bureau refused to extend the compliance period – even though it issued numerous changes as late as in October 2013 to its regulations that were "finalized" in January 2013. In the past when the Federal Reserve Board had rulemaking jurisdiction over these types of regulations, the Fed often had an effective date but with a mandatory compliance date six or nine months later.

NCUA and the federal banking agencies recognized that many mortgage lenders simply could not have all their systems changed and training completed, and publicly announced in early 2014 that their examiners would take "good-faith efforts to comply" into account. However, since the regulations were effective in January 2014, lenders are not protected from private *Truth in Lending Act* lawsuits down the road for any disclosures and procedures that don't comply with the language of the January 2014 regulations.

While not a matter under the jurisdiction of the Financial Services Committee, another example of compliance burdens created with unmovable effective dates is the *Foreign Account Tax Compliance Act* (FATCA) which was effective July 1, 2014. The IRS did not even issue regulations until March 2014 which changed provisions on reporting about nonresident aliens (impacting W-8BEN forms and procedures), and there are still many questions from credit unions on how FATCA might impact their operations.

Acknowledging that it still had more regulations, forms, instructions and guidance to issue (and much of it probably wouldn't even be out until after the effective date), instead of postponing the July 1, 2104 effective date, in May the Internal Revenue Service announced it was allowing for "a transition period" until December 2015 – taking into consideration financial institutions "good faith efforts" to comply with the new requirements before enforcing penalties. On June 30, 2014 (the day before the "effective date") the IRS issued additional regulations, some of which appear to contradict previous provisions. It is certainly difficult to be held to a "good faith compliance effort" standard for "moving target" regulations.

We urge the Subcommittee to work closely with the regulators to ensure that the effective dates of their rulemakings provide credit unions and other covered entities sufficient time to come into compliance.

Conclusion

The crisis of creeping complexity with respect to regulatory burden is severe. We welcome the steps that the Subcommittee, the full Committee and the House of Representatives have taken in recent months to try to address the challenges facing credit unions and other community based lenders. The bills under consideration today are a small step in the right direction, but much more needs to be done. We encourage you to move forward with additional measures in the near future, and we stand ready to work with you on these issues.

On behalf of America's credit unions and their 99 million members, thank you very much for holding today's hearing and providing me the opportunity to testify. I am happy to answer any questions the Members of the Subcommittee may have.