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TESTIMONY OF

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BEFORE THE

FINANCIAL SERVICES SUBCOMMITTEE ON
FINANCIAL INSTITUTIONS AND CONSUMER CREDIT
UNITED STATES HOUSE OF REPRESENTATIVES

AT A HEARING ENTITLED,
"EXAMINING LEGISLATIVE PROPOSALS TO PROVIDE TARGETED REGULATORY RELIEF TO COMMUNITY FINANCIAL INSTITUTIONS"

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Testimony of
Rick Nichols
President & CEO
River Region Credit Union
Before the
Financial Services Subcommittee on
Financial Institutions and Consumer Credit
United States House of Representatives
At a hearing entitled,
"Examining Legislative Proposals to Provide Targeted Regulatory Relief to Community Financial Institutions"
July 12, 2017

Chairman Luetkemeyer, Ranking Member Clay, and Members of the Subcommittee:

Thank you for the opportunity to testify on this important topic. My name is Rick Nichols, and I am President and CEO of River Region Credit Union, headquartered in Jefferson City, Missouri. I am also a member of the Board of Directors of the Heartland Credit Union Association, and my credit union is a member of the Credit Union National Association.

River Region Credit Union proudly serves more than 22,000 members and offers regular savings at competitive rates and quality loans at reasonable rates, and provides other financial services to meet its members' needs and the credit union's long term financial stability. Since 1954, our credit union has provided financial services to our community, including many organizations and businesses such as the Missouri National Guard, Missouri Highway Patrol, the health care industry, the transportation industry, and the Missouri Farmers Association (MFA).

By asset size ($198 million), loans outstanding ($161 million), and member deposits ($176 million), we are a small financial institution, especially when compared to regional and national banks. Unlike other financial service providers who are not as connected to the consumers they serve, we are an integral component of our community as a not-for profit institution owned by our members. River Region Credit Union was established to "encourage growth and better service through education and membership participation." Providing financial education and engaging directly with our members to equip them with the resources to face financial challenges, as well as the costs of everyday life, is a key component of our community's economic well-being.

As you know, the recent economic crisis impacted communities throughout the United States. As such, we supported efforts to reexamine and revise the policies that led to the existence of "too-big-to-fail" institutions and their irresponsible actions that economically harmed many Americans. Unfortunately, the government's response was not tailored to the institutions ultimately responsible for the economic crisis.

In the wake of the tidal wave of new regulations following the financial crisis, the largest banks and nonbank financial service providers continue to grow larger, while smaller financial institutions suffer under an anti-competitive regulatory scheme rigged to favor those that can better afford to comply with the regulations coming out of Washington. Unfortunately, the compliance burdens stemming from this new environment take away from our ability to serve our members. For instance, new mortgage disclosure and underwriting requirements imposed by the Consumer Financial Protection Bureau (CFPB) have had the unintended effect of preventing credit unions, such as River Region Credit Union, from lending at pre-crisis levels. Increasing the cost of making a loan does not spur economic growth in communities like Jefferson City; rather, it leads to fewer consumers having access to the products and services they need. Although our credit union continues to provide mortgage loans, many others have either exited the market or reduced their offerings.

My testimony outlines common-sense proposals that would help responsible community financial institutions, like credit unions, continue to serve their members and communities so they can grow and thrive. Some of the legislation being discussed today would make significant strides in furthering the goal of removing regulatory barriers to allow credit unions to more fully serve their members. We strongly support such targeted regulatory relief that will reduce unnecessary compliance burdens for community financial institutions.

The Current Regulatory Landscape

Since the outset of the crisis, credit unions have been subject to well over 200 regulatory changes from over a dozen federal agencies, which have totaled more than 8,000 Federal Register pages. This never-ending stream of new regulations, especially from the CFPB, has caused credit unions to divert resources from serving members and has led to tough choices regarding limiting and eliminating certain products and services.

Additionally, disparity in the cost impact of regulatory burden has accelerated the consolidation of the credit union system, as well as smaller participants in the banking sector, reducing consumers' financial institution choices. Although the number of credit unions has continually declined since 1970, the attrition rate has increased since 2010 following the recession and the creation of the CFPB. In fact, 2014 and 2015 were among the top five years in terms of attrition rates since 1970, at 4.2% and 4.1%, respectively. Notably, attrition rates at smaller credit unions have been especially high: in both 2014 and 2015, the attrition rate at credit unions with less than $25 million in assets—half of all credit unions are of this size—has exceeded 6%. These higher attrition rates are a direct result of both the dramatically higher regulatory costs incurred by small credit unions and the increases in those costs since 2010.

Earlier this year, CUNA surveyed credit union executives to measure the impact of these rules on credit union members.[1] The findings indicate:

- More than four in 10 credit unions that offered mortgages sometime during the past five years (44%) have either eliminated certain mortgage products or services (33%) or stopped offering them (11%), primarily due to burden from CFPB regulations. Credit unions with assets of less than $100 million are the asset group most apt to have dropped their mortgage program altogether.
- At 80%, the Truth in Lending Act and Real Estate Settlement Procedures Act (TILA-RESPA) Integrated Disclosure rules are far and away the rules most negatively impacting credit unions offering mortgages. This is followed by the Qualified Mortgage rule (43%), Mortgage Servicing rule (30%), and new Home Mortgage Disclosure Act (HMDA) rules (19%). TILA-RESPA serves as the most troublesome rule for all asset groups. (Notably, many credit unions have not yet even turned their full attention to the requirements in the new HMDA rules so this impact is likely understated.)
- One in four credit unions (23%) that currently offer Home Equity Lines of Credit (HELOCs) indicate they plan to either curtail their HELOC offerings or stop offering them in response to the new HMDA rules.
- The clear majority of credit unions (93%) that either currently offer payday/small-dollar loans or are considering offering them indicate they will likely no longer consider providing these loans if there are increased regulations (33%), will review the impact and then decide whether to continue the currently-existing offering (43%), or will likely discontinue the currently existing loan product (without an impact review) if there are increased regulations (17%).

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[1] Haller, Jon; Ledin, Paul; and Malla, Bandana, Credit Union National Association Impact of CFPB Rules Survey, *available at* https://www.cuna.org/uploadedFiles/CUNA/Legislative_And_Regulatory_Advocacy/Removing_Barriers_Blog/Removing_Barriers_Blog/FINAL%20Report%20Summary%20only%20Impact%20of%20CFPB%20Survey%20Analysis.pdf (Feb. 2017).

As credit unions continue to suffer under the current regulatory scheme, even their prudential regulator, the National Credit Union Administration (NCUA), recognizes the clear need for regulatory relief for them. As you know, the NCUA has responsibility for maintaining the safety and soundness of the National Credit Union Share Insurance Fund (NCUSIF) and examines and supervises credit unions. Through this role, the NCUA has recognized the need for relief for credit unions from regulatory burdens. NCUA Chairman Mark McWatters recently sent a letter to CFPB Director Richard Cordray outlining some specific areas where relief is needed. Notably, the NCUA recognized that the different structure and size of credit unions warrants tailored regulations and in certain instances, exemption from rules since credit unions are already highly regulated and have a long history as consumer protectors. In NCUA's letter, it highlighted that the median size for credit unions is less than $30 million in assets and the median staff size of a credit union is eight employees. Accordingly, it noted credit unions "can struggle to stay abreast of complex and evolving compliance requirements without the retention of often cost prohibitive counsel, accountants, financial advisors, and other professionals."[2]

Findings from a study of credit unions' regulatory burden completed in 2016, are consistent with these NCUA concerns. The study found that the impact of regulatory burden on credit unions and their members was $7.2 billion in 2014 alone.[3] This represented a 40% increase in compliance costs from 2010. Significant new rulemakings have taken effect since 2014, which have undoubtedly increased the cost credit unions and their members are paying to comply with rules designed for abusers even more. At the time of the study, credit union-wide, the equivalent of about one staff member's time for every four employees was spent on regulatory compliance.

Unfortunately, when credit unions spend their resources on complying with rules aimed at predatory lenders, they spend fewer resources on innovating and providing products and services that spur economic growth. As the NCUA noted in its letter, when credit unions provide affordable financial services, this benefits credit union members and their communities.

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[2] National Credit Union Administration Letter to CFPB Concerning Compliance with CFPB Rules, *available at* https://www.cuna.org/uploadedFiles/CUNA/Legislative_And_Regulatory_Advocacy/Removing_Barriers_Blog/Removing_Barriers_Blog/Cordray%20CU%20Compliance%20with%20CFPB%20Rules%20Letter.pdf (May 24, 2017).

[3] Hui, V., Myers, R., Seymour, K, "Regulatory Financial Impact Study." Cornerstone Advisors, Inc., *available at* http://www.cuna.org/regburden/ (Feb. 2016).

America's Credit Unions Support H.R. 2133, the Community Lending Enhancement and Regulatory Relief Act (CLEARR Act)

The Community Lending Enhancement and Regulatory Relief Act of 2017 (the CLEARR Act of 2017) includes several provisions that would allow credit unions to more fully serve their members. Specifically, credit unions support the following proposals in the CLEARR Act:

- Section 2, which directs the CFPB to provide an exemption or adjustment from the mortgage loan servicing and escrow account administration requirements in TILA/RESPA for creditors with less than $50 billion in assets holding the loans in portfolio or servicers of fewer than 30,000 loans;
- Section 3, which would amend TILA to exempt higher-risk mortgages from property appraisal requirements;
- Section 5, which would repeal the risk-based capital regulation finalized by NCUA in 2015;
- Section 6, which would modify the CFPB's Unfair, Deceptive and Abusive Actions or Practices Authority (UDAAP);
- Section 7, which would amend the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA) to require intent to discriminate;
- Section 8, which would make improvements to the CFPB's final HMDA Rules;
- Section 9, which would repeal the CFPB's ability to collect small business loan data;
- Section 10, which would establish requirements under which a federal banking agency could request or order the termination of a credit union member's account;
- Section 12, which would require the CFPB to issue a rule allowing consumers to waive requirements related to the timing of providing closing disclosures for mortgage loans;
- Section 13, which would increase the CFPB supervisory threshold from $10 Billion to $50 Billion;
- Section 15, which would create a safe harbor for mortgages held in portfolio at credit unions and by other mortgage lenders, deeming them qualified mortgages for purposes of the CFPB's mortgage lending rules; and
- Section 16, which would transfer to the FHFA the authority to define the ability to pay standard for purpose of a qualified mortgage.

Section 2 – Mortgage Servicing and Escrow Thresholds

Section 2 would direct the CFPB to provide an exemption or adjustment from the mortgage loan servicing and escrow account administration requirements of RESPA for creditors with less than $50 billion in assets or servicers of fewer than 30,000 loans annually.

Prior to the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), credit unions were required to open escrow accounts for one year on higher-priced, first-lien mortgages secured by borrower's principal dwelling. However, new rules promulgated by the CFPB require credit unions to hold an escrow account open for five years. As a result, some credit unions have shied away from higher-priced mortgages because of the expertise that is required to establish and maintain escrow accounts.

It is unfortunate that legislation is necessary on this issue. We believe the CFPB has the authority to make these exemptions under the existing authority which Congress conveyed to it to keep the regulatory burden on community financial institutions measured while addressing rulemakings on large banks and abusers of consumers. However, the CFPB has not exercised this authority fully, making this legislation necessary in order to ensure these rules are appropriately focused. The two changes made by this legislation will provide important regulatory relief to credit unions and help them efficiently serve their members. We strongly support Section 2.

Section 3 – Appraisal Requirements for Higher-Risk Mortgages

Section 3 amends TILA to exempt higher-risk mortgages from property appraisal requirements. It also amends 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, if such mortgage loans are held on a lender's portfolio for at least three years.

By providing an exemption from the TILA appraisal requirement for properties with transaction values of $250,000 or less for loans held in portfolio for a least three years, the bill would provide both regulatory relief to mortgage lenders and increase access to mortgage credit for borrowers purchasing lower-cost dwellings. Simply put, this provision will allow credit unions that offer mortgage loans secured by covered properties to better serve middle to lower income consumers.

Section 5 – Repealing NCUA's 2015 Risk-Based Capital Rule

Section 5 would repeal NCUA's 2015 risk-based capital rule and set criteria for the agency to propose a similar rule. While the Federal Credit Union Act requires NCUA to issue a risk-based capital rule, the 2015 regulatory changes went too far and represented a solution in search of a problem. Despite the improvements that the agency made through the rulemaking process, implementation of this misguided regulation will still cost credit unions significant resources that would be better used to the benefit of their members.

Section 6 – Reforming CFPB's UDAAP Authority

Basic tenets of the rule of law suggest regulations should be clear, publicized, stable, and just. Through its application of its UDAAP authority, the CFPB has failed consumers by ignoring these principles. Thus, Congress should take steps, as proposed in Section 6, to curtail the Bureau's authority.

The CFPB has used its UDAAP authority as a broad tool to sweep credit unions into proposed regulations consistent with its ideological goals, despite no evidence of harm to consumers. For example, using its UDAAP authority, the CFPB has proposed to include consumer-friendly, credit union small dollar loan programs in its new Payday and Small Dollar Loan Rule (small dollar rule).[4] Though little to no data suggest these products have any pattern of harm to consumers, the proposed rule imposes new and complex requirements on credit unions. In fact, in the three years prior to the Bureau proposing a new small dollar rule, there were precisely four complaints regarding credit union small dollar loans, representing 0.088 percent of complaints regarding this type of loan product.[5] To the contrary, consumers have stated that credit union small dollar loans are often their safest and best option for credit.[6] Instead of using its broad UDAAP authority to restrict consumer access to short term credit from credit unions, the CFPB should be doing more to encourage credit unions to engage in this market which is a critical source of credit for low and moderate income consumers.

The CFPB has also used this authority to send credit unions mixed messages regarding prudential regulator guidance and to create new law. For example, in a recent enforcement action against a credit union, the CFPB labeled it an unfair practice when it froze members' account access and disabled certain electronic services after consumers became delinquent.[7] Several NCUA legal opinion letters conflict with this CFPB finding and specifically do not preclude a federal credit union from restricting the availability of certain services (e.g., ATM

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[4] Payday, Vehicle Title, and Certain High-Cost Installment Loans, 81 Fed. Reg. 47864, 47900 (July 22, 2016).
[5] CFPB's Consumer Complaint Database, *available at* http://www.consumerfinance.gov/data-research/consumercomplaints/#download-the-data (based on data downloaded on Sept. 29, 2016).
[6] Peace, Elizabeth. "Consumers Prefer Credit Unions to Payday Lenders," Credit Union Times, available at: http://www.cutimes.com/2015/07/28/consumers-prefer-credit-unions-to-payday-lenders (July 28, 2015).
[7] In the Matter of Navy Federal Credit Unions, *available at* http://files.consumerfinance.gov/f/documents/102016_cfpb_NavyFederalConsentOrder.pdf (Oct. 11, 2016).

services, credit cards, loans, share draft privileges, preauthorized transfers, etc.) to members provided there is a rational basis for doing so, and as long as the members are aware of the policy.[8]

Creating new requirements through enforcement actions, particularly when they conflict with longstanding statutory precedent, is extremely concerning to credit unions. Credit unions obviously support efforts to ensure that credit union members are treated fairly and the concept that all collection efforts should be conducted in a respectable and not overly aggressive way. However, we are concerned with any circumstances in which the CFPB faults credit unions using its UDAAP authority when we are complying with current law, regulation and supervisory guidance.

Arbitrary policies made outside the well-established procedures of administrative law create uncertainty and deter credit unions from offering products and services, and extending credit to borrowers, because the risk and exposure of non-compliance is stifling. In fact, in a recent member survey by CUNA, credit unions stated that they strongly believe that future CFPB policies making it more difficult for a credit union to collect on debts would cause their credit union to cut back on current practices regarding providing credit to "riskier" borrowers.[9] Both consumers and financial institutions benefit when clear rules are created and enforced free of political divisiveness, with numerous voices at the table with various areas of expertise, and a solid understanding of current laws and policies.

My concern regarding the CFPB's use of its UDAAP authority to regulate and supervise credit unions are shared by the NCUA, credit unions' prudential regulator. As previously discussed, NCUA recently memorialized several suggestions for alleviating unnecessary burdens and improving the ability of credit unions to serve consumers in a letter to the CFPB, and mentioned the CPFB's UDAAP authority as an area that needs reforms.[10]

Moreover, the NCUA sent a comment letter to the CFPB urging it to exempt aspects of credit union lending from the small dollar rule.[11] The NCUA later reiterated these concerns in a subsequent letter to the CFPB that

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[8] NCUA Opinion Letter Concerning Denial of Services to Joint Share Account Owners, *available at* https://www.ncua.gov/Legal/OpinionLetters/OL2005-0723.pdf#search=member%20causes%20a%20loss (Sept. 20 2005).
[9] Impact of CFPB Rules Survey *supra* note 1.
[10] National Credit Union Administration Comment Letter to CFPB in response to the CFPB's proposed rule for Payday, Small Dollar, and High Cost Loans, *available at* https://www.ncua.gov/newsroom/Documents/comment-letter-2016-oct-metsger-payday-rule.pdf (Oct. 3, 2016).
[11] *Id.*

states it should provide clarity to credit unions with respect to UDAAP.[12] The NCUA expressed that "uncertainty regarding supervisory expectations can limit the ability of credit unions to provide the services sought by their members."[13] In addition, the NCUA noted there is no precedent for understanding the abusive prong of UDAAP, which can be broad.

When credit unions operate without due process and a clear picture of the rules they are expected to follow, they stop innovating and limit their products and services, which is detrimental to their members and communities. As such, more clarity regarding the CFPB's use of UDAAP authority would benefit credit unions and their members; and removing the abusive prong of UDAAP seems an appropriate step for Congress to take. For these reasons and others, we strongly support Section 6.

Section 7 – Amending the Equal Credit Opportunity Act and Fair Housing Act

America's credit unions support nondiscrimination and equal access to credit. Our mission is to promote thrift and provide access to credit for provident purposes to our members. We understand the importance of and support the goals of the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA). Nevertheless, these laws presently place lenders in jeopardy of frivolous litigation because of creative legal arguments created by plaintiffs' firms. Section 7 brings in line legal standards more closely aligned with the original intent of the statutes and recent court rulings to clarify that violation of these laws require proof of intent before imposing liability on a lender. Such a change would allow courts to focus on truly bad actors who were the intended targets of the original legislation.

Section 8 – Raising Home Mortgage Disclosure Act Reporting Thresholds

The CFPB has acknowledged that credit unions maintained sound credit practices through the economic crisis and did not engage in the practices that led to the crash of the housing market. Nevertheless, the HMDA rule penalizes credit unions where there has been no evidence of wrongful conduct. We support the CLEARR Act's provisions to exempt depository institutions from reporting closed-end mortgage loans if the depository institution originated less than 1,000 closed-end mortgage loans in each of the 2 preceding calendar years, and

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[12] Letter from National Credit Union Administration Chairman Mark McWatters to Consumer Financial Protection Bureau Director Richard Cordray regarding credit union compliance with CFPB rules, *available at* https://www.cuna.org/uploadedFiles/CUNA/Legislative_And_Regulatory_Advocacy/Removing_Barriers_Blog/Removing_Barriers_Blog/Cordray%20CU%20Compliance%20with%20CFPB%20Rules%20Letter.pdf (May 24, 2017).
[13] *Id.*

open-end lines of credit if the depository institution originated less than 2,000 open-end lines of credit in each of the two preceding calendar years.

For HMDA, the NCUA in its May 24, 2017, letter also highlighted several specific changes that should be made to the CFPB's final rule. It states that consideration should be given by the CFPB to raising the various thresholds to a more substantive asset and transaction volume level to further reduce the reporting burden on smaller credit unions. The letter further highlights concern with requiring the reporting of 25 new data points. Chairman McWatters writes that credit unions should be exempt from reporting the additional 14 data points and that, "such an exemption would provide much-needed regulatory relief to the credit union community and assist these institutions in their mission to serve middle class Americans, those striving to join the middle class, and small business owners, employees, customers, and vendors." Specifically, the NCUA asks the CFPB to consider the economic burden its rule would place on credit unions.[14]

The CFPB went too far in its final HMDA rule and the impact on credit unions and credit union members is already taking affect as credit unions prepare to comply with the new regulation. While we hope the Bureau would correct its overreach on its own volition through the rulemaking process, the likelihood of that is remote; therefore, Congress should act swiftly to correct the overreach by the Bureau by enacting Section 8.

Section 9 – Repealing Small Business Data Collection Requirements

Section 1071 of the Dodd-Frank Act amends the ECOA to require financial institutions to compile, maintain, and submit to the CFPB certain data on credit applications by women-owned, minority-owned, and small businesses. Section 9 would repeal this provision.

Credit unions' unique and distinct memberships, as well as the statutory restrictions on credit union business lending and their existing regulatory framework, do not coincide with the CFPB's plans for data collection and would likely result in data that does not portray a complete or accurate picture of credit union lending. As such, we have argued that Congress or the CFPB should exempt credit unions from the Section 1071 requirements because the regulatory harms caused by such a rule would far outweigh any benefit of having imperfect data. Taking into consideration the burden this type of requirement would impose on small entities – including credit

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[14] *Id.*

unions – we observe that it could harm the ability of small business owners to obtain credit from community-based financial institutions. Therefore, credit unions support repealing the provision.

Section 10 – Restrictions on Operation Choke Point

Section 10 seeks to address the problems associated with the Department of Justice's Operation Chokepoint program by establishing requirements under which a federal banking agency could request or order the termination of a credit union member or bank customer account.

While we strongly support the government's role in ensuring the integrity of financial markets and eliminating fraud, the program's arbitrary enforcement tactics could create unnecessary risks to consumers and to the economy. Section 10 would limit federal banking regulators' ability to discourage or restrict depository institutions from entering into or maintaining a financial services relationship with specific customers unless certain criteria are met. The provisions would also limit regulators' ability to pressure financial institutions to terminate customer accounts, requiring regulators to have a material reason for termination that is not based solely on the reputation risk posed by the customer before pressuring the financial institution to close the account. Credit unions are committed to maintaining the ability to serve their members while strictly following all laws and governing regulations. Section 10 is a reasonable approach to preventing fraud and maintaining financial integrity without overreaching.

Section 12 – Empowering Consumers to Waive Unnecessary Waiting Periods for Mortgages

Section 12 would require the CFPB to issue a rule allowing consumers to waive requirements related to the timing of providing closing disclosures for mortgage loans. We support borrowers having the information they need and sufficient time to review documents necessary to close a loan agreement. The mortgage lending process is complicated for lenders and borrowers alike. Occasionally, clerical errors are made or events occur that delay closings. Under the current regulatory scheme when a lender needs to update closing documents, the clock on the period a borrower has to review the documents restarts. Borrowers should have the flexibility to waive the waiting period in order to proceed with closing, particularly when there is no harm to any party or where all parties are in agreement. This is a common-sense solution to facilitate the mortgage process while at the same time recognizing that humans make errors. We support Section 12.

Section 13 – Increasing the CFPB Supervisory Threshold to Force the CFPB to Focus Its Supervisory and Enforcement Resources on the Wall Street Banks and Other Abusers of Consumers

Section 13 would increase the threshold for supervision of credit unions and banks by the CFPB from $10 billion to $50 billion.

Credit unions are experiencing growing consolidation, with smaller credit unions opting to merge due in large part to the strain of growing regulatory burden. The number of community-based financial institutions approaching $10 billion in total assets is increasing. As these institutions cross the threshold, the CFPB will be required to spend more of its resources examining these newly covered institutions at the expense of other important consumer protection activities. Adjusting the supervisory threshold would not significantly change the number of institutions or percentage of assets subject to examination by the CFPB, but it would allow it to more efficiently use its examination resources in the coming years to focus its attention on Wall Street banks and other abusers of consumers.

Furthermore, while there are only a small number of credit unions subject to the cap today, we believe raising the cap would be important recognition that credit unions were not the cause or perpetrators of the financial crisis and that credit unions, regardless of size, have a different incentive structure than for-profit financial institutions because they are owned by those they serve.

NCUA examines credit unions with less than $10 billion in assets for compliance with consumer protection law. We are confident that NCUA can supervise the five credit unions that presently hold between $10 billion and $50 billion in assets, and NCUA appears to agree. Last week, NCUA Chairman Mark McWatters wrote CFPB Director Richard Cordray to request he use the Bureau's exemption authority to transfer supervisory authority over all credit unions to NCUA.[15]

Inasmuch as there is only one credit union with more than $50 billion in assets, we would encourage the Subcommittee to consider exempting all credit unions from CFPB supervision. Further, we ask that the Subcommittee include language in this provision to adjust any asset threshold periodically for inflation.

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[15] Letter from NCUA Chairman Mark McWatters to CFPB Director Richard Cordray regarding credit union examination and enforcement, *available at* https://www.ncua.gov/newsroom/Documents/mcwatters-letter-to-CFPB-credit-union-examination-enforcement.pdf (July 6, 2017)

Section 15 – Encourage Community Financial Institutions to Lend by Deeming Mortgages Held in Portfolio as Qualified Mortgages

Section 15 would treat mortgages held in portfolio at credit unions and other mortgages as qualified mortgages for purposes of the CFPB's mortgage lending rules. The loans that financial institutions hold on their balance sheets should be treated in this manner as the lender retains all the risk involved with these mortgages and is subject to significant safety and soundness supervision from its prudential regulator. This will help credit unions, many of which are primarily portfolio lenders, continue to provide mortgage credit to their members.

Section 16 – Transferring Rulemaking for Ability to Repay Standards to FHFA

Section 16 would transfer rulemaking authority for determining a borrower's ability to repay a mortgage loan for purposes of the qualified mortgage rule from the CFPB to the Federal Housing Finance Agency (FHFA). Inasmuch as a loan meeting the qualified mortgage standards is eligible to be sold on the secondary market through a government sponsored agency regulated by FHFA, it is appropriate that the FHFA is the entity setting this standard.

America's Credit Unions Support H.R. 924, the Financial Institutions Due Process Act of 2017

H.R. 924, the Financial Institutions Due Process Act, would make several improvements to the examination process and the examination review process for credit unions. First, it would require NCUA to furnish examination reports within 60 days of the exit interview for the examination or the provision of additional information by the institution relating to the examination. Second, it would establish a three-judge independent examination review panel at the Federal Financial Institution Examination Council to hear appeals of final material supervisory determinations of the NCUA and other financial institution regulatory agencies. Third, the legislation would allow credit unions and other supervised financial institutions to request the regulatory agency provide written documentation of the agency's permission to take action, interpretation of law or regulation, and interpretation of generally accepted accounting principles, standards or requirements.

This legislation takes steps to bring fairness to an examination process that is not always transparent and an appeals process that, for credit unions, has never been balanced. CUNA, which maintains a perpetual member survey on examination process, practices and experiences, routinely hears of credit unions who have been subject to questionable and inconsistent requests from examiners who are unable or unwilling to substantiate their authority to make such requests.

America's Credit Unions Support H.R. 1457, the Making On-Line Banking Initiation Legal and Easy Act (MOBILE Act)

Credit unions support H.R. 1457, the Making On-Line Banking Initiation Legal and Easy (MOBILE) Act. This legislation would allow financial institutions, with an individual's consent, to record personal information from a swipe, copy, or image of such individual's driver's license or personal identification card and store the information electronically for the purpose of verifying the identity of a customer and preventing fraud or criminal activity. It would prohibit financial institutions from selling, renting, transferring, or making such information available to another person

This legislation is an important step toward helping credit unions and other financial institutions remain competitive in a market increasingly disrupted by financial-technology companies, who are often subject to fewer regulatory requirements. To the extent that this legislation makes it easier for consumers to join credit unions, we view this as a positive step.

America's Credit Unions Support H.R. 2396, the Privacy Notification Technical Correction Act

Credit unions support H.R. 2396, the Privacy Notification Technical Correction Act. We appreciate that Congress recently enacted amendments to privacy notification requirements that no longer require credit unions to mail disclosures to members annually. We understand that a technical correction is necessary because some credit unions and other financial institutions may provide different notifications to members or customers who do not receive electronic statements and different notifications to members or customers depending on their account status with the institution. The legislation under consideration today would provide credit unions sufficient flexibility to ensure that members have access to the privacy policy pertinent to their relationship with the credit union.

Other Bills Subject of Today's Hearing

America's credit unions take no position on H.R. 2148 or Representative Hollingsworth's discussion draft of the EQUAL Act. We continue to review H.R. 864.

Congress Should Continue to Tackle Regulatory Relief Priorities

America's credit unions greatly appreciate the Subcommittee's work on these targeted regulatory relief proposals. The complexity of the crisis facing community-based financial institutions means that one piece of legislation is unlikely to solve all the public policy obstacles these important institutions face in serving consumers and small businesses. We encourage the Subcommittee to continue to pursue additional measures to provide meaningful relief to community financial institutions, including the following.

Strengthening the CFPB's Exemption Authority

The CFPB regularly cites modest thresholds and accommodations it has provided in some mortgage rules and the remittances rule as evidence it is considering the impact its rules have on credit unions and their members. Regrettably, the CFPB's efforts have not been sufficient and have not fully taken into consideration the size, complexity, structure, or mission of all credit unions.

Section 1022 of the Dodd-Frank Act provides the CFPB with authority to exempt 'any class of covered entity' from its rulemaking. Last year, 399 Members of Congress—bipartisan majorities in both chambers—called on the CFPB to exercise this authority to shield credit unions and small banks from rules designed to reign in large banks and other abusers of consumers. If the CFPB remains unwilling to use this authority fully, Congress should enact legislation to clarify that credit unions are exempt from CFPB rules unless the Bureau demonstrates credit unions are causing consumers harm.

Installing a Five Member Commission at the CFPB

As presently structured, the CFPB is an anomaly in the federal government. The CFPB's extraordinary authority is vested in a single person, absent appropriate levels of Congressional oversight. We strongly believe that modernizing it to include a multi-member Commission would enhance rulemaking by ensuring diverse perspectives are included in final rules and prevent disruptions caused by personnel changes. Credit union members will benefit from policymaking that includes more voices and different expertise.

Consumer protection should not be about politics; it should be about creating the best environment to enable financial health and safety—a mission that the credit union movement has adhered to for many decades with bipartisan support. The best way to remove politics from this equation is through a multi-member commission. We encourage Congress to continue to consider the virtues of a multi-member Commission to bring fairness and certainty to the rulemaking process for America's credit unions and small banks.

Conclusion

On behalf of America's credit unions and their 110 million members, thank you for the opportunity to testify today. I am happy to answer any questions the Subcommittee may have.