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TESTIMONY
OF
PATRICK MILLER
PRESIDENT AND CHIEF EXECUTIVE OFFICER
CBC FEDERAL CREDIT UNION

ON BEHALF OF
THE CREDIT UNION NATIONAL ASSOCIATION

AT THE HEARING OF
THE COMMITTEE ON FINANCIAL SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES

ON
PRESERVING CONSUMER CHOICE AND FINANCIAL INDEPENDENCE

MARCH 18, 2015

Testimony
of
Patrick Miller
President and Chief Executive Officer
CBC Federal Credit Union
On Behalf of
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Chairman Hensarling, Ranking Member Waters, Members of the Committee:

Thank you for the opportunity to testify today regarding proposals for regulatory relief for small depository institutions. My name is Patrick Miller, and I am president and chief executive officer of CBC Federal Credit Union, a federally insured state chartered credit union located in Oxnard, California, serving more than 22,000 members. I am testifying today on behalf of the Credit Union National Association, the national trade association for America's state and federally chartered credit unions. CUNA represents approximately 90% of America's 6,500 credit unions and their 102 million memberships.

For over 100 years, credit unions' have provided safe and sound lending opportunities for their members. In return, credit union members have been loyal borrowers through economic good times and bad. The system's size and growth in terms of membership, loans and deposits, and its consistent soundness are indicators that credit unions succeed in meeting their members' needs. Together, credit union employees and members have created a member-owned cooperative financial system that works, with a system wide capital ratio of over 10%.

However, the continuous onslaught of unnecessary regulatory rules threatens access to safe and sound lending. Regulatory proposals do not exist in a vacuum. Every action the National Credit Union Administration (NCUA), the Consumer Financial Protection Bureau (CFPB), and Congress take has real world consequences for credit unions and their 102 million members.

Credit unions have been vocal regarding the cost of overregulation. For instance, Capital Communications FCU in New York, provided the following story regarding CFPB regulations:

> As a credit union with a mortgage subsidiary we were hit particularly hard in relation to the CFPB's mortgage regulations which were implemented in light of Dodd-Frank. Throughout nearly all of 2013 and a good part of 2014 we were working diligently in order to be in compliance with the many onerous provisions of the mortgage regulations; and one of the definitive words is "we"! The mortgage regulations were not something that could be dealt with by one person and it took a team of employees knowledgeable in mortgage lending and multiple hours expended to ensure that we were in full compliance prior to the January 2014 implementation date. And the CFPB's efforts didn't stop with those mortgage regulations as now we are faced with the regulation that combines the TILA and RESPA forms as well as amendments to the Home Mortgage Disclosure Act that we are potentially facing. We often wonder if these proposed regulations issued by the CFPB are fully thought through before they are issued as it sometimes appears that provisions are added on a whim rather than fully analyzing the ramifications and impact on financial institutions. Many times it seems like the CFPB's proposals are solutions in search of problems.

This is just one of many stories where burdensome regulations have prevented credit unions from fully serving their members. It is important to note credit unions are not attempting to lend irresponsibly and, in fact, have historically always been very prudent lenders. Credit union employees know their members and their ability to borrow, but that relationship is not recognized in the over 6,000 pages of regulations implemented since 2009.

Credit unions and their members acted responsibly during the economic crisis, but they continue to be unfairly penalized for the actions of too-big-to-fail financial institutions. We work every day to deliver service excellence to our members, but that cannot happen when certain statutory and regulatory barriers keep credit unions from fully serving the needs of their members. We want to work with Congress, and specifically the Financial Services Committee, to remove barriers and create opportunities, so credit unions can better server their members all while continuing to practice safe and sound lending practices.

The Consequences of Doing Nothing

Since the beginning of the financial crisis, credit unions have been subjected to more than 190 regulatory changes from nearly three dozen Federal agencies totaling nearly 6,000 *Federal Register* pages.[1] These numbers do not even take into account regulatory changes that may emanate from state regulators. Every time a rule or regulation is changed or adopted, credit unions, and thereby their members, incur costs. They must take time to understand the new requirement, modify their computer systems, update their internal processes and controls, train and oftentimes retrain their staff, design and print new forms and produce material to help their members understand each new requirement.

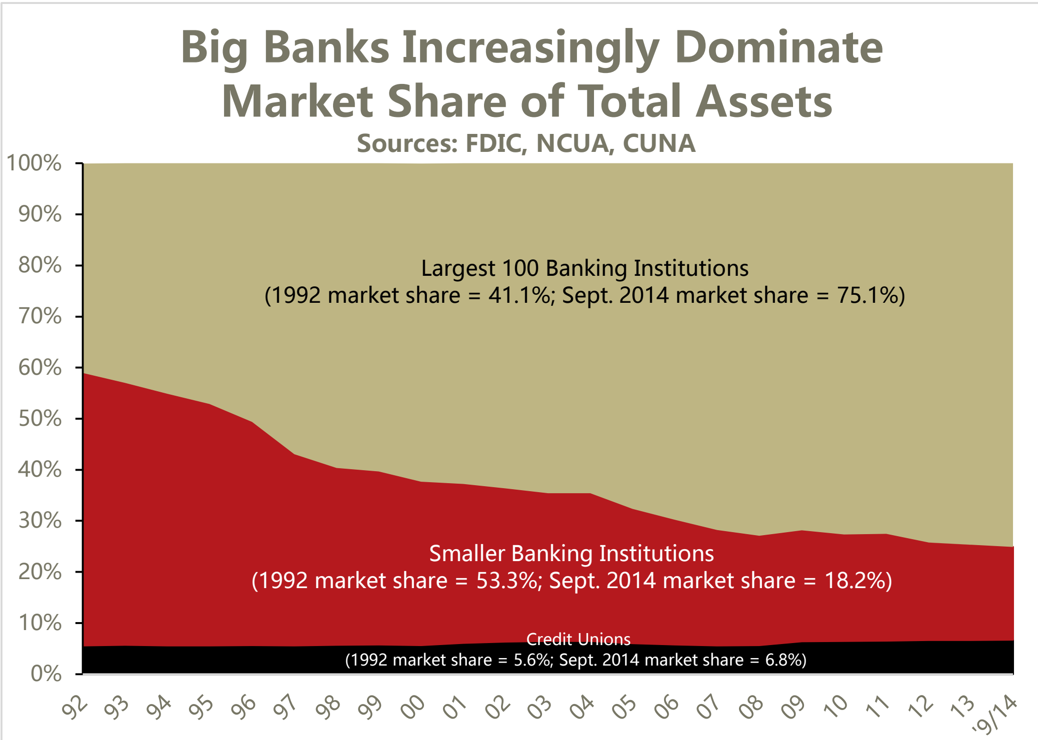
Even simple changes in regulation cost credit unions thousands of dollars and many hours: time and resources that could be more appropriately spent on serving the needs of credit union members, not the desire of overzealous regulators. Congress needs to tell regulators to stop treating credit unions like we

[1] A list of these changes, the agencies which promulgated them and the number of pages of each rule is attached to this testimony.

created the financial crisis or contributed to it. Regulations have real world consequences that prevent hardworking Americans from receiving the best financial services and products they could. That is a disservice to your constituents which we try very hard to serve.

Constant regulatory changes present a particularly difficult challenge for small depository institutions, because the fixed cost of compliance are proportionately higher for smaller-sized credit unions and banks than for large institutions. Congress and regulators ask a lot of small, not-for-profit, financial institutions when they tell them to comply with the same rules as J.P. Morgan, Bank of America and Citibank. Almost half of the credit unions in the United States operate with five or fewer full-time equivalent employees; the largest banks likely have compliance departments that exceed that number by multiples of a hundred or more. To put the question of size in further perspective, consider that each of the four largest banks in the United States has total assets greater than the combined assets of the entire credit union system. The rules that the CFPB has promulgated so far have not taken this disparity -- and disproportionate burden -- into consideration as much as we feel it can or should under the law.

This is one of the primary reasons that small financial institutions are disappearing at an alarming rate. Over the last 20 years, the number of credit unions have been cut in half – from more than 12,500 in 1995 to just more than 6,500 today. This means small financial institutions that know their members and their ability to borrow are becoming extinct. The alternative for consumers is to turn to large financial institutions that are more concerned with their own bottom line than the borrower's needs. Small financial institutions are proud to serve their members, your constituents, but when overly burdensome regulations are required, it becomes much harder for those institutions to survive.



The problem is that regulators are, in many cases, applying a one-size-fits-all approach to regulation on depository institutions; and, when there are exceptions or exemptions provided in rulemaking, they are too narrow to be effective. The CFPB's international remittance transfer (IRT) rule is a great example of the negative consequences of regulation that is too broad and has unintended consequences when applied to credit unions, which did not engage in the activity that brought on the new rule.

CUNA recently conducted a survey of credit unions that offer or have offered IRTs since 2013. Responses to the CUNA survey clearly show the shockingly large impact a regulation can have on service provision and consumer costs. The survey reveals that almost half of credit unions (49%) have either stopped offering IRTs (23%) or now turn members away (26%), purposefully limiting the number of IRTs to stay below the CFPB's rule threshold. Another 12% say they are considering discontinuing the service.

Among those who still offer IRT services, one third do so through third-party providers. Fully 71% of these credit unions indicate the cost of providing these services has increased, with 25% saying those costs have increased by 50% or more. Among those that continue to offer IRT services in-house, 56% say they've had to increase prices, with 32% indicating they've had to increase prices 50% or more.

When asked to describe their approach to pricing IRTs**,** none indicate that they choose prices to earn a significant profit. Overall, 40% say they price to break-even and 44% say they price to make a small profit, while 15% indicate that they lose money on IRT service provision.

The numbers paint a clear picture: as a result of the rule, fewer credit unions are offering remittances; those that continue to offer remittances conduct fewer transactions; and the transactions that credit unions complete are priced higher than they were prior to the rule. It is hard to see how credit union members benefit when their credit unions are forced to discontinue, limit or significantly increase the cost of this critical lifeline service.

If Congress does nothing to protect small depository institutions from unnecessary regulatory burden, the trend of consolidation will continue; consumers will have fewer options in the financial marketplace; and the cost of accessing mainstream financial services will increase. Today, because credit unions are actively fulfilling their mission, consumers – credit union members and nonmembers – benefit to the tune of $10 billion annually. Without credit unions providing their low-cost services to members, everyone pays a higher price. This outcome is unacceptable, and Congress can do something about it.

The Barriers Credit Unions Face

Credit unions face many statutory and regulatory barriers as they work to fulfill their mission and fully serve their members. This testimony discusses more than two dozen proposals or issues that Congress should address:

- Congress Should Make Several Improvements to the *Federal Credit Union Act:*
    - Improve Credit Union Capital Requirements, H.R. 989, the Capital Access for Small Businesses and Jobs Act
    - Restore Credit Unions' Business Lending Authority
        - Increase the Member Business Lending Cap (H.R. 1188, the *Credit Union Small Business Job Creation Act*)
        - Treat 1-4 Family Non-Owner Occupied Residential Loans as Residential Loans, and Not Credit Union Business Loans
        - Improve Credit Unions' Ability to Engage in Small Business Administration and Other Guaranteed Lending Programs
    - Modernize Credit Unions' Loan Maturity Restrictions
    - Modernize Credit Union Investment Authority
    - Modernize Regulation of Federal Credit Union By-Laws
    - Address Credit Unions' Incidental Powers
    - Clarify Credit Unions' Ability to Offer Prepaid Cards
    - Improve Analysis of NCUA Rulemakings and Require Public Hearings on the NCUA Budget
- Improve the Structure of the CFPB to Achieve Better Results for Consumers and Covered Entities
    - Expand and Specify the CFPB's Exemption Authority
    - Install a Five-Person Board to Run the CFPB (H.R. 1266, The Financial Product Safety Commission Act)
    - Fund the CFPB Through the Appropriations Process (H.R. 1261, the Bureau of Consumer Financial Protection Accountability Act of 2015)
    - Substantially Increase the CFPB Examination Threshold and increase it for inflation. (S. 482, the Consumer Financial

    Protection Bureau Examination and Reporting Threshold Act of 2015)
    - Require Cost-Benefit Analysis of all CFPB Proposals
    - Codify the Credit Union Advisory Council (H.R. 1195, the Bureau of Consumer Financial Protection Advisory Boards Act)
    - Require Small Business Regulatory Enforcement Fairness Act Panels for CFPB Rulemakings
    - Improve the Definition of Rural and Underserved Areas (H.R. 1259, the Help Expand Lending Practices (HELP) in Rural Communities Act)
    - Enact the Mortgage Choice Act (H.R. 685)
    - Raise the Points and Fees Limit on Qualified Mortgages Greater than $100,000
    - Standardize the Definition of Mortgage Originator
    - Deem Mortgages Held in Portfolio as Qualified Mortgages (H.R. 1210, the Portfolio Lending and Mortgage Access Act)
- Enact Examination Fairness Legislation
- Address Issues Related to Federal Home Loan Bank Membership Eligibility
    - Ensure FHLB Membership Eligibility Rules are the Same for Small Credit Unions and Banks
    - Make Privately Insured Credit Unions Eligible to Join the Federal Home Loan Bank System (H.R. 299, the Capital Access for Small Community Financial Institutions Act of 2015)
- Enact the Privacy Notification Modernization Act (H.R. 601/S. 423)
- Stop Merchant Data Breaches

This testimony also discusses issues we believe could develop into new barriers for credit unions if Congress does not undertake oversight of them. These include possible proposals from the National Credit Union Administration (NCUA) related to third-party vendor authority and interest rate risk.

Congress Should Make Several Improvements to the *Federal Credit Union Act*

It has been nearly 20 years since Congress enacted meaningful and comprehensive amendments to the *Federal Credit Union Act*. Since the enactment of the *Credit Union Membership Access Act of 1998*, Congress has amended the *Federal Credit Union Act* precisely nine times. These amendments included restrictions of former NCUA employees,[2] requirements on the use of the NCUA logo,[3] an increase of loan maturity limits on certain loans,[4] authorization for credit unions to provide certain lifeline services to nonmembers within their field of membership,[5] *Bankruptcy Reform Act* conforming amendments,[6] *Housing and Economic Recovery Act* conforming amendments,[7] establishment of the corporate credit union stabilization fund,[8] *Dodd-Frank Act* conforming amendments,[9] additional clarification related to the stabilization fund,[10] and most recently an amendment providing parity with FDIC insurance coverage of trust accounts.[11]

During the same period of time, Congress repealed the *Glass-Steagall Act*, removing the barrier between commercial and investment banking and enacted

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[2] Public Law 108-458 (December 17, 2004) added Section 206(w). Added a section restricting employment of certain NCUA employees after leaving the agency.
[3] Public Law 109-173 (February 15, 2006) amended Section 205(a), 207(k). Amended sections requiring insurance logo and increased insurance coverage for certain retirement accounts.
[4] Public Law 109-351, Financial Services Regulatory Relief Act (October 13, 2006). Increased certain loan maturities from 12 to 15 years; allowed certain check cashing and money transfer services to be offered and other small housekeeping amendments.
[5] Ibid.
[6] Public Law 109-8 (April 20, 2005) amended Section 207(c)(8)(D). Amended definition to give the NCUA Board more authority to define a "qualified financial contract", which generally is a securities contract. This was part of the Bankruptcy Abuse Prevention and Consumer Protection Act.
[7] Public Law 110-289, the Housing and Economic Recovery Act (July 30 2008) div. A, title VI, § 1604(b)(2), amended Section 207. Minor amendment to changing the term "bridge bank" to "bridge depository institution.
[8] Public Law 111-22, Preventing Mortgage Foreclosures and Enhancing Mortgage Credit Act (May 20, 2009) div. A, title II, § 204(c), (e), & (f) amended Sections 202(c)(2), 203(d) and added Section 217. Created the Temporary Corporate Credit Union Stabilization Fund; temporarily increased share deposit insurance.
[9] Public Law 111-203, the Dodd Frank Act (July 21, 2010) title III, §§ 335(b), 343(b)(1), (3), 351, 362(3) amended Sections 206(g)(7) and 207, title III, § 362(1) and title X, § 1073(d), amended Sections 107, 205 and 206; title IX, § 988(a) amended Section 216.
[10] Public Law 111-382, National Credit Union Authority Clarification (January 4, 2011) §§ 1 & 2, amended Section 202 and added Section 217; § 3 amended Section 216. Authorized NCUA to make stabilization fund expenditures without borrowing from the Treasury; required a study of the supervision of corporates and the use of prompt corrective action.
[11] Public Law 113-252, Credit Union Share Insurance Fund Parity Act (December 18, 2014). Allows NCUA to provide NCUSIF insurance to IOLTAs and other similar escrow accounts.

several bills aimed at removing barriers for small banks to compete against large banks;[12] reduced the frequency of examinations for banks between $200 million and $500 million;[13] provided banks with access to the $700 billion taxpayer funded Troubled Asset Relief Program (TARP);[14] adjusted the deposit insurance base to save community banks $4.5 billion over three years;[15] temporarily guaranteed all deposits in banks through the Transaction Account Guarantee (TAG) program;[16] created a $30 billion business lending program for banks under $10 billion in total assets;[17] raised the bank shareholder threshold for registering with the Securities and Exchange Commission;[18] increased the threshold for bank holding companies and savings and loan holding companies to satisfy certain tests to incur additional debt for the purposes of acquiring other banks from $500 million to $1 billion;[19] and ensured that there is a community bank representative on the Federal Reserve Board of Governors.[20]

When the extensive procedural and substantive relief that Congress has provided to banks is juxtaposed with the limited and modest amendments which have been enacted to the *Federal Credit Union Act*, it becomes easy to understand the frustration from many in the credit union system. Congress must ensure the credit union charter allows institutions to fully serve their members' needs in the sophisticated financial services marketplace we have today. The following proposals would help credit unions more fully serve their members while at the same time enhancing the safety and soundness of the credit union system.

[12] Public Law 106-102, Gramm-Leach-Bliley Act.
[13] Public Law 109-473, a bill to make a conforming amendment to the Federal Deposit Insurance Act with respect to examinations of certain insured depository institutions.
[14]Public Law 110-343, the Emergency Economic Stabilization Act.
[15] Public Law 111-203, the Dodd-Frank Wall Street Reform and Consumer Protection Act.
[16] Ibid.
[17] Public Law 111-240, the Small Business Jobs Act.
[18] Public Law 112-106, the Jumpstart our Business Startups.
[19] Public Law 113-250, a bill to enhance the ability of community financial institutions to foster economic growth and serve their communities, boost small businesses, and increase individual savings.
[20] Public Law 114-1, the Terrorism Risk Insurance Act.

Improve Credit Union Capital Requirements

One lesson of the financial crisis is “capital is king” and the measures used to assess the capital condition of financial institutions were imperfect, to put it mildly. Financial regulators, including NCUA, have worked in recent years to impose “better” schemes to assess the health of financial institutions; NCUA’s new risk-based capital proposal is its latest attempt in this area. While we appreciate the significant improvements that NCUA has made to the second version of this proposed rule, questions persist on whether the costs of implementing the proposal outweigh the benefit to the National Credit Union Share Insurance Fund. Stakeholders will continue to weigh in on the rulemaking process, but Congress should seriously consider whether significant changes to the statutory framework need to be made.

The questions for Congress are whether, in a modern financial services environment in which regulators use scalpels to assess the risk of various asset types:

- Does it make sense for the credit union system to have its leverage ratio hardwired into the statute, or would it make more sense for the safety and soundness regulator to have more discretion to develop capital requirements that more appropriately reflect the risk a credit union might present to the share insurance fund?
- Would the safety and soundness of the credit union system benefit if credit unions had access to additional sources of capital in a form consistent with the cooperative ownership structure under which they operate?

We encourage Congress to consider comprehensive reforms to the credit union capital structure, including authorizing NCUA to define what the different net worth levels must be in order to be “well-capitalized,” “adequately capitalized,” “undercapitalized,” and “significantly undercapitalized,” based on credit unions’ financial performance, current economic trends and other relevant factors.

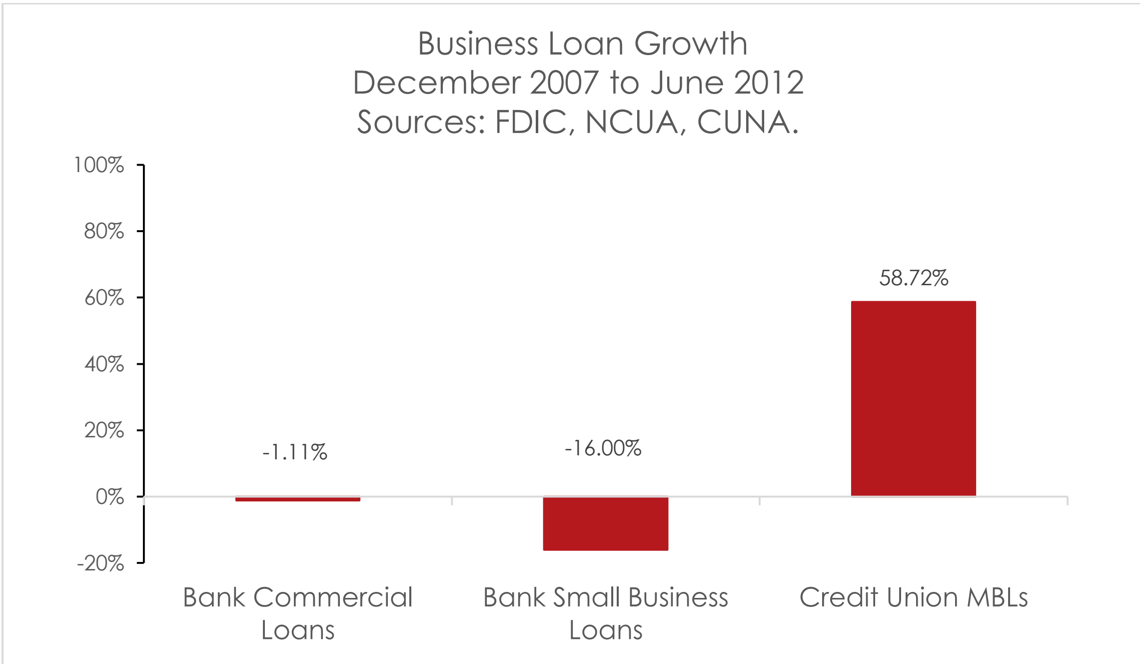
We also believe that NCUA should have the authority to allow all credit unions to accept supplemental forms of capital. Under current law, approximately 2,000 credit unions, those designated as low-income credit unions, have this authority. Permitting all credit unions to acquire supplemental capital in a manner consistent with their cooperative ownership structure would enhance the safety and soundness of the credit union system. As we have testified in the past, we support H.R. 989, the Capital Access for Small Businesses and Jobs Act, that Representatives King (R-NY) and Sherman (D-CA) have introduced, which would clarify the National Credit Union Administration’s (NCUA) authority to improve credit union safety and soundness by permitting credit unions to accept supplemental forms of capital. H.R. 989 would be a good place to start regarding credit union capital reform.

Restore Credit Unions’ Business Lending Authority

We reiterate our call on Congress to restore credit unions’ authority to lend to their small business members. No economic or safety and soundness rationale has ever been established for why credit unions should be subjected to a cap on small business lending, and we believe Congress should fully restore credit unions’ ability to lend to their small business members, as they did without statutory restriction until 1998.

As we have testified many times before, while the small banks were asking for taxpayer money to lend to small businesses, credit unions were pleading with Congress to permit well-capitalized credit unions with a strong history of business lending to lend beyond the arbitrary cap on business lending that is in statute.

The facts are not in dispute. During the financial crisis, banks withdrew access to credit for small businesses while credit unions kept lending.



Anecdotally, we are aware of several instances in which banks referred business lending customers to credit unions, because they were unable to make the loans themselves.

NCUA has testified in support of expanding the business lending cap several times, most recently before the Senate Banking Committee in February.[21] The administration has supported expanding the business lending cap.[22] There are close to 500 credit unions for which the cap is a significant operational restriction. These credit unions deserve the opportunity to continue to serve their business members and their communities, and Congress should address this issue.

[21] Testimony of Larry Fazio, Director, Office of Examination and Insurance, National Credit Union Administration, before the Senate Banking Committee Hearing on “Regulatory Relief for Community Banks and Credit Unions.” February 10, 2015.
[22] Letter from U.S. Secretary of Treasury Timothy Geithner to House Financial Services Committee Chairman Barney Frank. May 25, 2010.

Increase the Member Business Lending Cap

If Congress is unable to eliminate the cap entirely, we strongly urge enactment of H.R. 1188, the Credit Union Small Business Jobs Creation Act, which we would like to thank Members of this Committee, Representative Royce (R-CA) and Representative Meeks (D-NY) for introducing. This bill has been introduced in the last several Congresses and would permit Federally insured credit unions to make member business loans (MBLs) in an aggregate of 27.5% of its total assets as long as the credit union: (a) is well-capitalized; (b) can demonstrate at least 5 years' experience managing a sound MBL program; (c) has had MBLs outstanding equal to at least 80% of 12.25% of its assets; and (d) complies with applicable regulations. We believe this is a reasonable approach that ensures that business lending in excess of the current statutory cap is conducted by healthy credit unions with a demonstrated history of sound business lending practices. While it does not get credit unions back to the place they were prior to 1998 when they were not subject to a statutory cap on business lending, it will provide several hundred credit unions with relief to continue to serve their small business members and their communities.

Importantly, raising the cap in the manner outlined above would increase small business lending by as much as $16 billion, helping to create nearly 150,000 new jobs, in the first year after enactment. This level of growth would have been very helpful in the throes of the financial crisis, but even in the recovering economy, this type of growth is important. And, contrary to the banker argument, this lending would not produce a dollar for dollar reduction in bank lending. In fact, the Small Business Administration (SBA) commissioned a study that suggested 80% of additional credit union lending would be new small business lending.[23] This would be a benefit for small business owners and it would not jeopardize the banking

[23] Wilcox, James A. "The Increasing Importance of Credit Unions in Small Business Lending." Small Business Administration Office of Advocacy. September 2011. 20.

industry's share of the small business lending market, which for the last two decades has been approximately 93% of the market.

Treat 1-4 Family Non-Owner Occupied Residential Loans as Residential Loans, Not Credit Union Business Loans

In addition to legislation to modernize credit union business lending, we encourage Congress to address a disparity in the treatment of certain residential loans made by banks and credit unions. When a bank makes a loan for the purchase of 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 loan, it would be classified as a business loan and therefore subject to the cap on member business lending under the *Federal Credit Union Act*.

We support legislation to amend the *Federal Credit Union Act* to provide an exclusion from the cap for these loans. Last Congress, Representative Royce (R-CA) and Representative Huffman (D-CA) introduced H.R. 4226, which corrects this difference; we encourage its reintroduction. Doing so would not only correct this disparity, but it would 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 contribute to the availability of affordable rental housing.

It is also worth noting that in its recent risk-based capital proposal, NCUA treated these loans differently than commercial loans. Excluding these loans from the business lending cap would provide consistency with the agency.

Improve Credit Unions' Ability to Engage in Small Business Administration and Other Guaranteed Lending Programs

We encourage Congress to improve credit unions' ability to offer SBA and other government guaranteed loans. Specifically, Congress should exempt government guaranteed loans in their entirety from the member business lending cap; currently, only the guaranteed portion of the loan is exempt. Further, Congress should clarify that credit unions participating in Federal and state loan guarantee programs may include terms for such loans as permitted by the loan guarantee programs in both statute and regulations; this would allow credit unions to more fully participate in the SBA's 504 Loan Program.

Modernize Credit Unions' Loan Maturity Restrictions

We encourage Congress to consider legislation that eliminates references in the *Federal Credit Union Act* to loan maturities, leaving it to Federal credit unions to make their own business decisions about maturities of their various loans. As enacted in 1934, the *Federal Credit Union Act* specified a maximum loan maturity and this provision has continually been amended as new products emerge. There is no overall safety and soundness reason for these provisions to remain in the Act; NCUA should be able to address any particular concerns through general regulatory authority, but more likely through specific supervisory actions. National banks and state chartered credit unions in every state except Alaska, Louisiana and Oklahoma, are not subject to loan maturity limits.

Modernize Credit Union Investment Authority

The *Federal Credit Union Act* currently limits Federal credit unions' investment authority to loans, government securities, deposits in other financial institutions and certain other limited investments. The limitation curtails the ability of a credit union to respond to the needs of its members. We encourage Congress to permit Federal credit unions to purchase investments for their own accounts in bonds, notes, debentures or other instruments and other "investment securities" similar to those authorized for national banks.[24] Similar proposals have passed the House of Representatives in 2006 and 2008.[25]

[24] Under 12 USC section 24 as implemented by 12 CFR 1.
[25] Section 303 of H.R. 3505, 109th Congress, which passed the House of Representatives on March 8, 2006; Section 101 of H.R. 6312, 110th Congress, which passed the House of Representatives on June 24, 2008.

Modernize Regulation of Federal Credit Union Bylaws

We encourage Congress to modernize outdated credit union governance restrictions to better address the evolving needs of Federal credit unions.

Although we believe that NCUA has this authority, we ask Congress to allow Federal credit unions to devise their own bylaws, which include permitting the boards of directors of Federal credit unions to impose term limits on members of the board and permitting credit unions to adopt policies related to the expulsion of members.

The bylaw provision in the *Federal Credit Union Act* was adopted many decades ago to address the needs of new credit unions. Based on that language, today NCUA issues standard bylaws which must be implemented by all Federal credit unions, regardless of size and complexity, unless individual credit unions seek NCUA approval to amend specific provisions. This is an unnecessarily archaic approach, and the Act needs to be altered to allow NCUA to address bylaws, in general, and to prepare model bylaw language that a Federal credit union can choose to use.

Federal credit union boards of directors should have the flexibility to establish term limits for members of the board in order to allow for a turnover of expertise and a broader representation as membership changes. Providing credit unions with this right does not raise supervisory concerns and should not, therefore, be regulated or restricted by government. We ask Congress to permit Federal credit union boards of directors to decide for themselves whether terms limits are appropriate.

The *Federal Credit Union Act* currently permits a member to be expelled by a two-thirds vote of the membership present at a special meeting, which can be costly to call. While the instances of credit union member expulsion are rare, there have been situations in the past where a more expedited expulsion process would have been warranted, including situations where a member was harassing personnel and creating concerns for the physical safety of staff and other credit union members. Under the current language, a Federal credit union has little latitude to address such situations efficiently and in a timely manner. We ask Congress to provide Federal credit union boards of directors additional flexibility to address these situations by allowing Federal credit unions to adopt and enforce an expulsion policy for just cause and nonparticipation by majority vote of their board of directors. Similar proposals passed the House of Representatives in 2006 and 2008.[26]

Address Credit Unions' Incidental Powers

We encourage Congress to enact legislation to establish the same incidental powers authority for Federal credit unions in the *Federal Credit Union Act* as exists for national banks in the *National Bank Act*.[27] As part of this proposal, NCUA should be directed to implement standards for incidental powers that are no more limited than those relied upon by the Comptroller of the Currency in approving new incidental powers activities for national banks and to consider additional incidental powers for credit unions whenever such powers are approved by the Comptroller.

Clarify Credit Unions' Ability to Offer Prepaid Cards

To ensure that credit unions are able to meet the evolving needs of their fields of membership, Congress should clarify that Federal credit unions can sell prepaid payment cards to persons within their field of membership, similar to existing authority to provide check cashing and remittances services to persons within their field of membership.

In addition, Congress may need to clarify the insurance coverage of prepaid cards issued by the credit union on behalf of a member to nonmembers within the field of membership. We would like to thank Representative Royce for the bill he

[26] Section 310 of H.R. 3505, 109th Congress, which passed the House of Representatives on March 8, 2006; Section 110 of H.R. 6312, 110th Congress, which passed the House of Representatives on June 24, 2008.
[27] 12 U.S.C. § 24.

introduced last Congress which became P.L. 113-252, the Credit Union Share Insurance Fund Parity Act. We believe this law provides the NCUA with authority to extend insurance coverage to funds in master accounts owned by nonmembers, and we have asked NCUA for clarification of this matter. If NCUA determines that it does not have the authority to extend insurance coverage to these types of accounts, Congress may need to amend the *Federal Credit Union Act* to provide such coverage. Doing so would be consistent with the coverage provided by the Federal Deposit Insurance Corporation.

Improve Analysis of NCUA Rulemakings and Require Public Hearings on the NCUA Budget

We encourage Congress to require NCUA to complete an extensive cost-benefit analysis before the agency proposes any rule and to provide this analysis with any proposal that is issued for comment. Credit unions fund NCUA and the National Credit Union Share Insurance Fund. It is reasonable that credit unions should be provided with an analysis of the cost and the benefit of proposals the regulator is proposing.

For the same reason, we encourage Congress to require the NCUA Board to conduct an annual public hearing on the agency's draft budget. While we appreciate the opportunity to discuss budgetary concerns with the Board in advance of action on the budget, it is fair and reasonable for the Board to take public comments for the record prior to taking action on a budget that relies on credit union member resources. Conducting such a hearing would represent a very modest burden on the agency and the Board – a handful of hours simply to listen to those whom they regulate – but it would be very meaningful to the credit unions that are responsible for funding the activities of the agency. Similar hearings were held for several years until they were discontinued in 2009. Until such time that a law can be enacted to compel the agency to provide such a forum for credit union stakeholders, we encourage the Committee to ask the Chairman of the NCUA to testify annually on the agency's budget.

Improve the Structure of the CFPB to Achieve Better Results for Consumers and Covered Entities

Since it was first proposed, CUNA has tried to take a reasonable approach to the Consumer Financial Protection Bureau (CFPB). During the legislative process that resulted in the creation of the Bureau, we maintained that a consumer agency *could* be a good way to achieve important protections for consumers, particularly consumers of products and services provided by then-unregulated entities. We also noted that credit unions did not in any way contribute to the financial debacle and their regulatory regime, coupled with their cooperative structure, protects against credit unions ever contributing to a financial crisis. We questioned the need for the Bureau's rules to apply to credit unions, for credit unions to be examined by the Bureau and for credit unions to have to pay for the operating expenses of the Bureau, because frankly, we didn't believe credit union members needed much protection from the credit unions that they own. We urged Congress to take steps to minimize the adverse impact the Bureau would have on credit unions' ability to serve their members. And, we were encouraged by the authority included in the legislation for the Bureau to provide exemptions to its rules for entire classes of entities, like credit unions; and we hoped the Bureau would use this to focus its efforts on the wrongdoers and those that abuse consumers.

Despite promises to "level the playing field" between regulated and unregulated financial product and service providers, the impact of many of the CFPB's rules has been to make it more difficult for credit unions to fully serve their members. In fact, many credit unions have limited or eliminated certain financial products and services traditionally provided to their members as a direct result of the CFPB's rules. Five years after enactment, Congress should seriously consider structural changes at the Bureau to ensure that it meets its mission without jeopardizing the good work that credit unions do to serve their members.

Expand and Specify the CFPB's Exemption Authority

Section 1022 of Title X of the *Dodd-Frank Act* and a number of the enumerated consumer laws expressly authorize the Bureau to provide exemptions from the requirements of statutes or implementing regulations generally or the requirements of certain provisions specifically. These various statutory provisions individually and together grant broad authority to the Bureau and constitute a strong legal framework to support the agency's reasonable use of its exemption authority. We believe that the Bureau should go much further than it has to exempt credit unions from its rule making, because credit unions, unlike other financial institutions, have not caused the abuse the Bureau is meant to address. The imposition of regulations designed to curb abuse elsewhere in the system reduces access to affordable products and services offered by credit unions. If the Bureau is unwilling to expand its perspective on the exemption authority that Congress has conveyed, Congress should state it more explicitly. We encourage the Committee to exercise significant oversight of the Bureau and press the agency on the impact its rules have on credit unions and their ability to provide their members access to credit and affordable financial products and services.

Install a Five-Person Board to Run the CFPB

CUNA encourages Congress to enact legislation to change the leadership structure at the Bureau from a single director to a five-person board. Expanding the Bureau's executive leadership to a five-person board will ensure that more voices contribute to the Bureau's rulemaking and it could help produce regulations that better balance the important mission of the Bureau and the impact the regulations have on the way products and services are provided to consumers.

We are not naïve: we know this is a highly politicized issue. Nevertheless, we encourage thoughtful consideration of this proposal now to ensure that the inaugural Board could be in place when Director Cordray's term expires, and we believe that the legislation proposed by Chairman Neugebauer, H.R. 1266, the *Financial Product Safety Commission Act of 2015*, accomplishes that goal.

Fund the CFPB through the Appropriations Process

We renew our call on Congress to place the CFPB under the appropriations process in order to provide an additional layer of supervision over the activities of the Bureau. As you know, today, the Bureau is funded through transfers from the Federal Reserve Board of Governors. Subjecting the Bureau to the appropriations process would give Congress a powerful tool to help ensure that the activities of the Bureau are consistent with its mission. Taking this step would help to ensure that the Bureau's rulemaking and supervisory activities do not harm consumers by making financial services less available and more expensive and do not erect unnecessary and overly burdensome barriers to credit unions and other providers of affordable financial products to consumers.

Substantially Increase the CFPB Examination Threshold

Senators Toomey (R-PA) and Donnelly (D-IN) recently introduced S. 482, the *Consumer Financial Protection Bureau Examination and Reporting Threshold Act of 2015*. This CUNA-supported legislation would increase the threshold for examination of banks and credit unions by the CFPB from $10 billion to $50 billion.

Raising the threshold would provide significant regulatory relief to the affected institutions and direct Bureau resources to previously unregulated entities, as well as 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 important consumer protection activities.

Institutions that will be affected by S. 432 will 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, 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.

If the Committee decides to pursue this matter, we would encourage any legislation increasing the examination threshold to provide for future adjustments indexed for inflation.

Require Cost-Benefit Analysis of all CFPB Proposals

We urge Congress to enact legislation to require the CFPB to complete an extensive cost-benefit analysis before the agency proposes a rule and to provide this analysis to the public with any proposal issued. The burden should be on the Bureau to detail the costs and benefits of its proposals, not on regulated parties to prove that there is a burden. We appreciated the focus that Chairman Shelby and others gave to this issue during the hearing with regulators earlier this week.

In the 113th Congress, Chairman Shelby introduced the *Financial Regulatory Responsibility Act* (S. 450) which would have required agencies to compare quantified benefits with quantified costs. The bill also would have required agencies to provide all data and analysis to the public (in the preamble of the rule) so that they can analyze the agencies' conclusions. Further, the legislation would have provided a mechanism for judicial review. We support the reintroduction of this legislation and encourage its enactment.

Codify the Credit Union Advisory Council

Shortly after the CFPB was established, the Bureau's leadership announced the creation of a credit union advisory council (CUAC). This group, which CUNA strongly supports, advises the agency on the impact of the Bureau's proposals on credit unions. CUAC shares information, analyses, recommendations and the unique perspective of not-for-profit financial institutions with the agency director and staff. However, since CUAC is not required by law, it could be abolished at any time. We believe CUAC is an important resource for the agency and also provides a forum for credit union officials to provide direct feedback to the agency on how proposals and final rules will affect credit unions' operations. Representatives Robert Pittenger and Denny Heck have introduced H.R. 1195, the *Bureau of Consumer Financial Protection Advisory Boards Act,* which would codify the CFPB Credit Union Advisory Council as a legal requirement and require the CFPB to reimburse all CUAC members for their travel and lodging expenses incurred to attend meetings of the CUAC. We are strongly supportive of this legislation.

Require Small Business Regulatory Enforcement Fairness Act Panels for CFPB Rulemakings

As required by the *Dodd-Frank Act*, the CFPB has held *Small Business Regulatory Enforcement Fairness Act* (SBREFA) panels for several of its regulations, including the mortgage rules. These panels, which are conducted under the auspices of the Small Business Administration's Office of Advocacy, are invaluable for identifying concerns and shedding light on costs small businesses, including credit unions, will have to bear under new proposals. However, the CFPB has taken the view that it is not required to hold a SBREFA panel for rulemakings that involve regulations transferred from other agencies, such as the international remittance transfers regulation that was initiated by the Federal Reserve Board. We ask Congress to direct the CFPB to hold SBREFA panels for all significant regulations that the CFPB promulgates.

Improve the Definition of "Rural and Underserved Areas"

CUNA applauds Representative Barr for introducing H.R. 1259, the "Helping Expand Lending Practices in Rural Community's Act". H.R. 1259 would direct the CFPB to establish a process for determining whether an area should be designate as rural if the CFPB hasn't already done so.

The CFPB has taken steps to minimize the impact of its mortgage rules on certain small creditors, but these steps do not provide credit unions with sufficient relief because credit unions did not contribute to problem mortgages that fueled the financial crisis. We urge Congress to work with the CFPB to do much more to minimize the impact of the agency's rules on mortgage lending credit unions.

Currently, small creditors in rural and underserved areas can originate mortgage loans that exceed a debt-to-income ratio of 43% if the loans are held in portfolio, despite the qualified mortgage (QM) standards to the contrary. In addition, such creditors in rural or underserved areas can originate QMs with balloon payments, while other lenders may not under the QM provisions. Under the *Home Ownership and Equity Protection Act*, small creditors that operate predominantly in rural or underserved areas are allowed to originate high-cost mortgages with balloon payments. Under the escrow rule, eligible small creditors do not have to set up escrow accounts for higher-priced mortgages.

The CFPB has recently issued a new proposal with changes to the agency's Escrow, Ability-to-Repay and *Home Ownership and Equity Protection Act* rules, several of which are intended to alleviate regulatory burdens imposed on small mortgage lenders serving rural or underserved areas. For example, the proposal would exempt creditors that originate up to 2,000 first-lien mortgage loans, as opposed to the current level of 500; loans held in portfolio also would not be included in determining mortgage-level activity for purposes of the exemption.

While these provisions are appreciated, they simply do not go far enough in light of the fact that credit unions were not the cause of the financial crisis and have not been engaging in abusive mortgage lending practices.

The CFPB is not proposing to raise the $2 billion assets threshold test for small creditors at this time even though the agency has the statutory authority to do so under the *Dodd-Frank Act*. The agency does index the threshold, which now stands at $2.060 billion as of December 2014. However, for purposes of mortgage lending, this threshold is far too low and we urge the agency to raise it to at least $10 billion, also indexed for inflation. This step would not harm consumers as community financial institutions, such as credit unions, work hard to ensure their borrowers can repay their loans and understand their terms. Such an increase would be consistent with the *Dodd-Frank Act's* treatment of smaller institutions that are not subject to the CFPB's direct examination authority. Also, it would provide important regulatory relief to key institutions that support our economy. We do not believe there is any good public policy reason to maintain the small creditor exemptions at such an artificially low level. We urge Congress to review the cut-off and work with the CFPB to increase the exemption level.

The proposal would enlarge the definition of "rural" areas to include census blocks that are not in an urban area as defined by the Census Bureau. CUNA supports efforts to expand the definition of rural but cautions that this approach may not be as easy to implement as the CFPB suggests, without easy-to-use resources. The Federal Communications Commission has provided a list of census blocks eligible for rural broadband support. We urge the CFPB to work with the Census Bureau to provide a list or direct-link to a list from the Census Bureau of rural census blocks for purposes of determining whether properties are located in rural areas.

We also have concerns with the CFPB's treatment of underserved areas. The pending proposal would conform provisions regarding "underserved areas" to the proposals mentioned above, but it is not seeking comments on the definition of underserved areas at this time.

Regulation Z provides that an area is “underserved” during a calendar year if, according to *Home Mortgage Disclosure Act* (HMDA) data, no more than two creditors extend covered transactions, as defined in § 1026.43(b)(1), secured by a first lien, five or more times in the county. We believe this approach is far too restrictive and we urge Congress to encourage efforts by the CFPB to develop a better, more inclusive definition of an underserved area that will benefit potential borrowers and communities that are underserved.

The CFPB is also proposing to cut the qualifying period for determining whether a creditor is operating predominately in a rural or underserved area from the three preceding calendar years to the preceding calendar year. CUNA opposes this proposed change.

Enact the Mortgage Choice Act

The QM rule sets the standard for consumer mortgages by providing significant compliance certainty to loans that do not have risky features and meet strict Federal requirements. A key requirement is that points and fees for a QM generally may not exceed 3% of the loan amount. The problem arises from the fact that, under current law and rules, what constitutes a “fee” or a “point” towards the cap varies greatly depending upon who is making the loan and what arrangements are made by consumers to obtain title insurance. If the consumer chooses a title insurance provider that is affiliated with the lender, the title insurance charges count, but if the insurance is purchased from an unaffiliated title agency, the title charges do not count. In addition, escrowed homeowners insurance premiums may count as “points and fees” due to ambiguous drafting in the law.

We encourage Congress to enact H.R. 685, the Mortgage Choice Act, to exclude from the points and fees calculation affiliated title insurance charges and escrowed homeowners’ insurance premiums. Without these amendments, the inclusion of title insurance and escrowed homeowners’ premiums will cause many loans, especially those to low- and moderate-income consumers, to fail this prong of the QM test. As a result, many otherwise qualified borrowers will not get access to safe and affordable mortgage credit.

Raise the Points and Fees Limit on Qualified Mortgages Greater than $100,000

We encourage Congress to raise the points-and-fees limit on qualified mortgage loans greater than $100,000 from 3% to 4%. For a loan to be a QM, the points and fees may not exceed the points and fees caps. This is a statutory cap contained within section 129C of the *Truth in Lending Act* (TILA), as amended by section 1411 of the *Dodd-Frank Act*. The CFPB recognizes that the points and fees caps should be higher for smaller loans, and using its discretionary rulemaking authority, provides higher limits for loans less than or equal to $100,000.

This amendment is important to ensure credit availability to qualified consumers, especially those attempting to obtain mortgage credit in high-cost areas across the country. A higher fee limit on mortgage loans greater than $100,000 will insure that fewer loans will be considered high cost mortgage loans subject to additional disclosures and limitations.

Standardize the Definition of Mortgage Originator

We encourage Congress to replace the definition of "mortgage originator" in the *Truth in Lending Act* with the *SAFE Act's* definition of "loan originator."

Under the *Dodd-Frank Act's* amendments to TILA, the term ''mortgage originator'' is overly broad and includes individuals who are not involved in the mortgage origination process, such as those who engage in advertising and promotional activities. On the other hand, the *SAFE Act's* definition provides an accurate representation of the limited duties a mortgage loan originator is required to perform, which are to take a residential mortgage loan application and offer or negotiate the terms of the residential mortgage loan for compensation or gain.

The definitions in both statutes should be aligned in order to reflect industry practice, facilitate the usage of standard terminology and definitions in the financial services industry's laws and regulations and reduce regulatory burden.

Deem Mortgages Held in Portfolio as Qualified Mortgages

We encourage Congress to amend the definition in Section 1412 of the *Dodd-Frank Act* to deem residential real estate mortgage loans made by credit unions and held in portfolio as "qualified mortgages." We support H.R. 1210, the Portfolio Lending and Mortgage Access Act, which was introduced by Representative Barr (R-KY) earlier this month and would accomplish just this goal.

CUNA strongly supports this provision that would help consumers have access to a wider array of loan products and terms. Credit unions and other financial institutions that hold residential mortgage loans on their balance sheets should generally have more flexibility in granting loans than financial institutions who make mortgage loans with the intention of selling them. Credit unions have demonstrated their responsible lending practices and have always adhered to the principle of ability-to-repay long before it was required by regulation. Credit unions enjoy low net charge off rates in their mortgage portfolios, which ultimately benefit consumers. Due to their proven performance history, these loans should be afforded qualified mortgage status at the time of loan closing.

Enact Examination Fairness Legislation

Concerns regarding credit union examinations increase during difficult economic times, but even as the economy recovers, credit unions continue to express concern with their examinations. CUNA recently conducted a survey of credit unions regarding satisfaction with their most recent examination.[28] Twenty

[28] CUNA/league affiliated credit unions received ongoing email correspondence from CUNA and their state league presidents inviting them to complete an on-line survey on their most recent exam. In addition, the survey was prominently featured on CUNA's website, in CUNA newsletters, and by leagues in a number of their communications with credit unions. The questionnaire was almost identical to one used in both 2012 and 2013. By September 10, 2014, we had received 447 responses, representing approximately 7% of all credit unions. On average, responding credit unions were

eight percent of credit unions reported dissatisfaction with their most recent exam. Excessive use of documents of resolution, applying "guidance" or "best practice" as if it was regulation, and examiners taking action to “cover” themselves stood out as the items that received the most negative ratings.

Credit unions support strong, fair and appropriate safety and soundness regulation and supervision to protect the financial resources of credit unions and their members and to minimize costs to the NCUSIF borne by all federally insured credit unions. Examinations should be based on the laws Congress enacts and the regulations that NCUA promulgates, not on examiner interpretation of “best practice” or guidance. Further, financial institutions need an examination appeals process that is independent and protects them from examiner retaliation.

In the last two Congresses, examination fairness legislation has been introduced (H.R. 1553 in the 113th Congress and H.R. 3461 in the 112th Congress). This legislation would have codified certain examination standards, provided an independent ombudsman to whom credit unions and banks could raise concerns about their exams and created an independent appeals process under which they could dispute determinations made in their exams. We would support the reintroduction of this legislation in the 114th Congress and encourage its enactment.

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once again somewhat larger than all US credit unions: For example, 37% of responding credit unions reported $25 millon or less in assets, while roughly 50% of all U.S. credit unions are this large. At the other end of the spectrum, 23% of responding credit unions have more than $250 million in assets compared to 11% of the population. In any case, there was strong response across all asset sizes. Because larger credit unions were more likely to respond, responses from single common bond credit unions were lower than the population, and community charters are more heavily represented. All totals reported in the survey will be weighted to the distribution of all credit unions by asset size when the final report is released, though doing so is unlikely to significantly change the observations found in this preliminary summary of findings.

Address Issues Related to Federal Home Loan Bank Membership Eligibility

Ensure FHLB Membership Eligibility Rules are the Same for Small Credit Unions and Banks

We are very concerned about the September 2, 2014, proposal from FHFA to revise the agency's rules regarding membership in a Federal Home Loan Bank (FHLB). FHLBs are critical sources of liquidity for many credit unions, and the proposed regulation would make it much more difficult for both new and existing credit unions to maintain access to the FHLB system. CUNA questions the need for the proposal and submitted a comment letter to the agency on January 12, 2015, that asked the agency to withdraw the proposal.[29]

This proposed rule, which is based on an advance notice of proposed rulemaking (ANPR) issued almost four years ago, creates two core requirements for financial institutions. First, the rule would require all financial institutions who are FHLB members to hold one percent of their assets in "home mortgage loans" on an ongoing basis. The proposed regulation suggests that FHFA is considering raising this requirement to as high as five percent in the future. While financial institutions currently must meet the one percent-of-assets threshold to become FHLB members, there is no requirement at this time that the member maintain it to remain a member.

Second, all FHLB-member credit unions—but, because of a statutory limitation in the *Federal Home Loan Bank Act*, only certain banks—would also be required to hold 10% of assets in "residential mortgage loans" on an ongoing basis. By statute, for initial membership, the *Federal Home Loan Bank Act*

[29] Letter from Mary Mitchell Dunn, Deputy General Counsel, Credit Union National Association to Alfred Pollard, General Council, Federal Housing Finance Agency. Comments on Proposed Changes to Federal Home Loan Bank Membership Requirements/RIN 2590-AA39. January 12, 2015.
(http://www.cuna.org/uploadedFiles/CUNA/Legislative_And_Regulatory_Advocacy/Track_Regulatory_Issues/Pending_Regulatory_Changes/2014/FHLB_MembershipLetter_01122015.pdf)

exempts from the “10 percent” requirement any “community financial institution” or “CFI,” as defined as FDIC-insured banks with less than $1 billion in average total assets (adjusted annually for inflation) over the preceding three years. Credit unions, generally insured by NCUA, are not eligible for this exemption. FHFA has proposed to maintain the “CFI” exemption without any variation for the purposes of *maintaining* membership, despite the fact that the agency has flexibility in this regard. FHFA should exercise its discretion and treat credit unions and banks equally if it moves forward with the proposal. CUNA also calls on Congress to amend the *Federal Home Loan Bank Act* to ensure credit unions are considered “community financial institutions” for the purpose of securing *initial* FHLB membership.

Beyond the issue of parity, we urge Congress to ask tough questions of FHFA regarding the need for this proposal as well as the details. Congress, not the regulator, should define who can be members of the FHLBs. FHFA is under no statutory obligation to impose these membership limits on an ongoing basis. Although we recognize FHFA has an interest in ensuring FHLB members maintain a commitment to housing finance, we believe this is a regulation in search of a problem. We are unaware of any financial institutions who can jump through the substantial regulatory hoops to become FHLB members, who are willing to buy stock in the FHLBs, and who meet the 10% requirement at the time of membership who are not committed to housing. This regulation will create another compliance task for credit unions, who will be forced to maintain a close watch over their balance sheet to ensure they meet an arbitrary requirement on an ongoing basis. FHFA acknowledges that the proposed regulation will put the existing FHLB membership for some credit unions in jeopardy. Loss of FHLB membership will limit access to the low-cost source of funding provided by the FHLBs, restricting credit at a time when our nation’s housing recovery remains fragile.

FHLB liquidity was a critical resource during the last financial crisis, and the proposed regulation would limit its utility in a future crisis. We hope FHFA will reconsider this proposal.

Make Privately Insured Credit Unions Eligible to Join the Federal Home Loan Bank System

We also support H.R. 299, the "Capital Access for Small Community Financial Institutions Act of 2015", legislation introduced by Representatives Steve Stivers and Joyce Beatty which corrects a drafting oversight in the *Federal Home Loan Bank Act* that has resulted in a small number of privately insured credit unions being ineligible to join a FHLB.

In 1989, in the wake of the savings and loan crisis, the FHLB System was opened up for the first time to commercial banks and credit unions. Unfortunately, the bill was drafted in such a way to apply only to an "insured credit union" as defined under the *Federal Credit Union Act*. If the legislation had used a broader term in the 12 USC 1752 of the *Federal Credit Union Act* – such as "state credit union" or "state-chartered credit union", terms that are clearly defined, then privately insured credit unions would have the same opportunity for membership as other financial institutions. This is why, for many years, we have suggested that this was likely an oversight in drafting. Unfortunately, it has meant for over two decades, a small group of credit unions have been denied the right to even apply for membership in the FHLB System.

The House of Representatives has continuously recognized this as a problem. In 2004, 2006 and 2014, the full House passed corrective legislation. In 2008, as part of the *Housing and Economic Recovery Act of 2008*, Congress made a small change to permit privately-insured, state-chartered credit unions designated as a Community Development Financial Institution (CDFI) to apply for membership to the FHLBs; however, of the 127 privately insured credit unions, only two are CDFI certified.

We understand some policymakers have concerns regarding the existence of the private insurance option; however, this legislation would not expand that option for credit unions nor would it present an increased risk to the FHLB System, since this legislation only allows privately insured credit unions the option to apply for membership.

If enacted, privately insured credit unions would not be the only non-Federally insured institutions eligible for membership in the FHLB System. Currently, insurance companies, which are not federally insured, are members of the System. In fact, in terms of current outstanding advancements, 119 insurance companies are borrowing almost twice as much as 427 federally insured credit unions.[30]

It has never seemed reasonable to our small institutions that some of the largest banks in the world, insurance companies (which are not Federally insured) or a foreign bank's U.S. subsidiary can borrow billions of dollars from the FHLB System, but credit unions serving teachers in Ohio and Texas, firefighters in California, postal and county workers in Illinois and farmers in Indiana cannot.

Enact the Privacy Notification Modernization Act

We encourage Congress to enact the *Privacy Notice Modernization Act* H.R. 601 (S. 423) introduced by members of this Committee, Representative Luetkemeyerand Representative Sherman. This is an example of legislation that both reduces regulatory burden and improves consumer protection. The legislation would require financial institutions to send their customers privacy policy notifications only when the privacy policy is changed.

Under current law, financial institutions must send these notices on an annual basis regardless of whether the policy changes. This imposes a significant

[30] According to the *Combined Financial Report of the Federal Home Loan Bank System for the Quarter ending on September 30, 2013.*

cost on credit unions and results in very little consumer benefit. Since 2001, credit unions have sent over 1 billion privacy notices to their members, averaging over 87,000,000 notices a year.

A voter survey conducted in 2013 showed that fewer than one-quarter of consumers read the privacy notifications they receive, and over three-quarters of consumers would be more likely to read them if they were only sent when the financial institution changed its policy. This suggests that the public policy goal of privacy notifications would be better achieved if the notices had more meaning to consumers. We believe that this legislation achieves this goal.

The legislation has passed the House of Representatives on a number of occasions, most recently in March 2013. The Senate bill in the last session enjoyed the co-sponsorship of 74 Senators. This is common sense legislation that should be enacted quickly.

Stop Merchant Data Breaches

Credit unions are subject to high data protection standards under the *Gramm-Leach-Bliley Act,* and they take their responsibility to protect their members' data seriously. Unfortunately, there is a weak link in the payments system that leaves consumers' financial data vulnerable to theft by domestic and international wrongdoers. The weak link is the absence of Federal data security standards for the merchants that accept payment cards.

There have been several very high profile merchant data breaches in the last few years, notably the breaches at Target in 2013 and Home Depot in 2014. Millions of credit union members were affected by these two breaches, which ultimately cost credit unions – and by extension their members – nearly $100 million. Despite the recovery efforts of payment card networks, no credit union has received a dime from the merchants whose security failure allowed the breach. Credit unions and their members are left on the hook.

These two breaches made headlines, but merchant data breach is a chronic issue. The endless string of breaches demonstrates clearly that those who accept payment cards need to be subject to the same Federal data standards as those who issue the cards.

It is important to recognize that the costs of a merchant data breach scenario on a small financial institution will be relatively greater than the costs of the same breach on large financial intuitions. For example, credit unions do not enjoy the economies of scale that national megabanks do. Therefore, the cost of everything, from replacing a debit card to monitoring suspicious activities, is greater.

Credit unions join with our colleagues in the banking industry to call on Congress to enact meaningful data security legislation that incorporates the following principles:

- Strong national data protection and consumer notification standards with effective enforcement provisions must be part of any comprehensive data security regime, applicable to any party with access to important consumer financial information.
- Banks and credit unions are already subject to robust data protection and notification standards. These *Gramm-Leach-Bliley Act* requirements must be recognized.
- Inconsistent state laws and regulations should be preempted in favor of strong Federal data protection and notification standards.
- In the event of a breach, the public should be informed where it occurred as soon as reasonably possible to allow consumers to protect themselves from fraud. Banks and credit unions, which often have the most direct relationship with affected consumers, should be

able to inform their customers and members about the breach, including the entity at which the breach occurred.

- Too often, banks and credit unions bear a disproportionate burden in covering the costs of breaches occurring beyond their premises. All parties must share in protecting consumers. Therefore, the costs of a data breach should ultimately be borne by the entity that incurs the breach.

There are a number of Congressional committees exploring remedies to merchant data breaches. Given the very direct and detrimental impact these breaches have on credit unions and banks, we ask the Committee to take a strong leadership role in these efforts.

Vendor Authority

We are deeply concerned that NCUA continues to urge Congress to convey to the agency supervisory authority over vendors and credit union service organizations (CUSOs). Further, we are troubled by their recent assertion that having such authority would represent regulatory relief for credit unions.[31]

CUNA opposes new statutory authority for NCUA to regulate and supervise directly Credit Union Service Organizations (CUSOs) or other third party entities that provide products and services to credit unions. Credit unions are already supervised for due diligence in third-party vendor relationships during their regular examinations. Giving NCUA additional authority to supervise third party vendors would increase the cost of the services these entities provide credit unions without providing any added benefit to the agency. We are also unconvinced that NCUA needs authority to regulate CUSOs inasmuch as CUSOs are generally owned by credit unions, subject to a statutory restriction that guards against concentration risk. The *Federal Credit Union Act* limits investment in a CUSO to 1% of a Federal

[31] Fazio. 15.

credit union's total assets. We encourage the Committee to reject NCUA's request for additional supervisory authority.

Interest Rate Risk

As part of its risk-based capital proposal, NCUA provided advance notice that it intends to consider a new proposal related to interest rate risk. While we will provide greater detail in our comment letter, we question whether a new rule on interest rate risk is necessary given the fact that NCUA presently has many supervisory tools that could be used to identify unreasonable interest rate risk at individual credit unions. We ask the Committee to explore with the agency whether a new rule is necessary or whether this might be better monitored through improvements in the supervisory process.

Conclusion

The length of this testimony and the breadth of the issues discussed herein are an indicator of just how many barriers credit unions face as they work to fulfill the mission that Congress has given them. We are confident that if barriers are removed, credit union members will be better off than they are today, because their credit unions will be spending less resources on complying with outdated, poorly focused and unreasonably burdensome regulation, and more time on meeting the financial services needs of their members. We stand ready to work with you to remove these barriers.

On behalf of America's 6,500 credit unions and their 102 million members, thank you very much for the invitation to testify at today's hearing.

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Finalized Federal Regulatory Changes Applicable to Credit Unions (Effective Dates on or after January 1, 2008)[32]

	Effective Date	Agency	Title of Final Rule	Pages in Federal Register
1	1/1/2008	FEMA	FEMA Flood Map Changes	2
2	1/1/2008	IRS	Annual Electronic Filing Requirement For Small Tax Exempt Organizations – Form 990-N	1
3	1/1/2008	IRS	IRS Form 990 Instructions - New Reporting Form	79
4	1/1/2008	IRS	IRS Redesign Form 990	28
5	5/29/2008	NCUA	Disclosures for Subprime Mortgage Loans	9
6	7/7/2008	FTC	CAN-SPAM Act Rules	27
7	10/1/2008	FHA	Hope for Homeowners Program for Subordinate Lienholders	6
8	10/10/2008	FASB	Use of Fair Value in an Inactive Market	7
9	10/22/2008	NCUA	Share Insurance Signs to Reflect Increased Limits	2
10	10/31/2008	NCUA	Official Advertising Statement	2
11	11/21/2008	NCUA	Incidental Powers	7

[32] Last updated: February 2015

12	12/15/2008	FASB	Amendments to the Impairment Guidance No. 99-20	44
13	12/31/2008	NCUA	PCA: Amended Definition of Post-Merger Net Worth	4
14	1/2/2009	NCUA	Criteria to Approve Service to Underserved Areas	5
15	1/7/2009	FHA	Interim Final Rule on Hope for Homeowners Program	6
16	1/16/2009	HUD	Final RESPA Rule	85
17	1/19/2009	FED	Unlawful Internet Gambling	31
18	4/3/2009	NCUA	Share Insurance Signs for Shared Branching	3
19	4/27/2009	NCUA	RegFlex Changes for Unimproved Land	1
20	5/14/2009	NCUA	Technical Changes to the FACT Act "Red Flags"	8
21	6/15/2009	FASB	Fair Value: Decrease in Market Activity/Transactions That Are Not Orderly	27
22	6/15/2009	FASB	Recognition and Presentation of Other-Than-Temporary Impairments	64
23	6/20/2009	FED	Restructuring of Fed’s Check Processing : Districts 10, 11, and 12	2
24	7/2/2009	FED	Fed Rule Authorizing Excess Balance Accounts and Earnings on Balances	10
25	7/2/2009	FED	Fed Rule Authorizing Pass-through Accounts and Adjusting the Limitation on Savings Account Transfers	11
26	7/19/2009	FED	Restructuring of Federal Reserve’s Check Processing : Districts 6 and 8	2
27	7/25/2009	FED	Restructuring of Federal Reserve’s Check Processing : Districts 4 and 9	2
28	7/30/2009	FED	Revisions to Regulation Z Mortgage Loan Disclosures	17
29	9/1/2009	NCUA	Credit Union Reporting	3

30	9/12/2009	FED	Restructuring of Federal Reserve’s Check Processing : Districts 4 and 7	2
31	9/14/2009	FED	Regulation Z Disclosures for Private Student Loans	63
32	9/21/2009	FED	Regulation Z Rule Implementing the CARD Act	26
33	10/1/2009	FED	Amendments to the Home Mortgage Provisions of Regulation Z	93
34	10/17/2009	FED	Restructuring of Federal Reserve’s Check Processing : Districts 11 and 12	3
35	10/18/2009	FED	Restructuring of Federal Reserve’s Check Processing : District 4	3
36	10/18/2009	FED	Restructuring of Federal Reserve’s Check Processing : District 6	3
37	11/6/2009	FHFA	Election of Federal Home Loan Bank Directors	13
38	11/14/2009	FED	Restructuring of Federal Reserve’s Check Processing : Districts 11 and 12	3
39	11/30/2009	NCUA	Share Insurance Coverage for Revocable Trust Accounts	9
40	11/30/2009	NCUA	Temporary Increase in SMSIA; Display of Official Sign; Coverage for Mortgage Servicing Accounts	10
41	12/12/2009	FED	Restructuring of Federal Reserve’s Check Processing : District 3	2
42	12/24/2009	NCUA	Exceptions to the Maturity Limit on Second Mortgages	2
43	1/1/2010	FED	Overdraft Protection Disclosures	11
44	1/1/2010	FED	Revisions to Regulation S	4
45	1/1/2010	NCUA	Operating Fees	3
46	1/1/2010	NCUA	Truth in Savings Rule for Overdraft Protection and Electronic Disclosures	5

47	1/4/2010	NCUA	NCUSIF Premium and One Percent Deposit	7
48	2/4/2010	FHFA	Federal Home Loan Bank Membership to Include Non-Federally Insured CDFI Credit Unions	27
49	2/10/2010	FinCEN	Expansion of Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity	11
50	2/14/2010	FED	Regulation Z Disclosures for Private Student Loans	63
51	2/22/2010	FED	Regulation Z Rule Implementing the CARD Act	268
52	2/27/2010	FED	Consolidation of Federal Reserve's Check-Processing	2
53	5/21/2010	NCUA	Interagency Policy Statement on Funding & Liquidity Risk Management	11
54	6/4/2010	FED	Establishment of Term Deposits at Federal Reserve Bank	6
55	6/18/2010	NACHA	Direct Access Registration Requirement	6
56	6/18/2010	NACHA	Risk Management and Assessment	4
57	7/1/2010	Education	Final Rules for Student Loans	35
58	7/1/2010	FED	Regulation Z Open-end Credit Final Rule	255
59	7/1/2010	FED	Regulation E Final Rule for Overdraft Protection Plans	8
60	7/1/2010	FTC	FACT Act Rules and Guidelines on the Accuracy of Credit Information	87
61	7/1/2010	NCUA	FACT Act Rules and Guidelines on the Accuracy of Credit Information	45
62	7/1/2010	NCUA	NCUA Final Rule on Unfair and Deceptive Practices for Credit Cards	3
63	7/6/2010	FTC	Disclosures for Non-federally Insured Credit Unions	7
64	7/26/2010	NCUA	Chartering and Field of Membership (FOM): Federal Credit Unions	9

65	8/2/2010	FED	FedACH SameDay Service	3
66	8/5/2010	NCUA	Low-Income Definition	2
67	8/16/2010	IRS	Payments Made in Settlement of Payment Card and Third-Party Network Transactions	16
68	8/22/2010	FED	Final Rule Implementing the CARD Act Provisions for Penalty Fees and Rate Reviews	68
69	8/22/2010	FED	Regulation E Rules for Gift Cards	43
70	9/2/2010	NCUA	Display of Official Sign; Permanent Increase in Standard Maximum Share Insurance Amount	3
71	9/7/2010	FED	Clarifications of Reg E and Reg DD Overdraft Rules	4
72	9/7/2010	NCUA	Clarifications on Reg DD Overdraft Protection Rules	4
73	10/1/2010	NCUA	SAFE Act	54
74	10/4/2010	HUD	FHA Risk Reduction Final Rule	4
75	10/18/2010	NCUA	Reverse Mortgage Guidance	12
76	10/25/2010	NCUA	Short-Term, Small Amount Loans	6
77	11/29/2010	NCUA	RegFlex Program Changes	4
78	11/29/2010	FED	Extension of CARD Act Effective Date for Gift Cards	5
79	12/23/2010	NCUA	Conversions of Insured CUs: Definition of Regional Director	2
80	12/31/2010	NCUA	Model Privacy Notices	105
81	1/1/2011	FED	FACT Act Risk-Based Notice Rule	61
82	1/1/2011	FED	Consumer Notification of Mortgage Loan Sales or Transfers	16
83	1/1/2011	FTC	Notice Regarding Charges Permitted Under the FCRA	1

84	1/1/2011	NACHA	Mobile ACH Payments	1
85	1/3/2011	FinCEN	Confidentiality of Suspicious Activity Reports	15
86	1/18/2011	NCUA	Corporate Credit Union Rule	4
87	1/20/2011	NCUA	IRPS 11-1 Supervisory Review Committee	4
88	1/27/2011	NCUA	Fiduciary Duties at Federal Credit Unions, and Mergers and Conversions of Insured Credit Unions	18
89	1/30/2011	FED	Interim Final Rule on Disclosures Required under the Mortgage Disclosure Improvement Act	8
90	1/31/2011	FED	Extension of CARD Act Gift Card Rules	1
91	3/14/2011	NCUA	Conversions of Insured Credit Unions: Definition of Regional Director	1
92	3/23/2011	NCUA	Corporate Credit Unions: Technical Corrections	1
93	3/23/2011	NCUA	PCA: Amended Definition of “Low-Risk Assets	2
94	3/24/2011	Treasury	Garnishment of Accounts Containing Federal Benefit Payments	24
95	3/28/2011	FinCEN	Amendment to BSA Regulations: Reports of Foreign Financial Accounts	1
96	3/28/2011	NCUA	IRPS: Chartering Corporate Federal Credit Unions	4
97	4/1/2011	FED	Interim Final Rule on Appraisal Independence	35
98	4/1/2011	FED	Loan Compensation and “Steering” of Loans	30
99	4/4/2011	FHA	Temporary Minimum Capital Increase for FHFA Regulated Entities	7
100	6/24/2011	NCUA	Technical Correction - Golden Parachute and Indemnification Payments	2
101	6/24/2011	NCUA	Temporary Unlimited Share Insurance for Noninterest-bearing Transaction Accounts	3

102	6/27/2011	NCUA	Golden Parachute and Indemnification Payments	12
103	7/21/2011	CFPB	Consumer Financial Rules to be Enforced by the CFPB	2
104	7/22/2011	CFPB	Regulation D Interim-Final Rule Implementing the Alternative Mortgage Transaction Parity Act	19
105	7/25/2011	NCUA	Sample Income Data to Meet the Low-income Definition	3
106	7/27/2011	NCUA	Remittance Transfers Interim Final Rule	2
107	8/10/2011	HUD	Technical Corrections & Clarifying Amendments to RESPA Regulations	4
108	8/15/2011	FED	Fair Credit Reporting Risk-Based Pricing (Credit Score Disclosures)	24
109	8/15/2011	FED	Regulation B - Equal Credit Opportunity Act (Credit Score Disclosures)	13
110	8/19/2011	FTC	Mortgage Acts & Practices - Advertising Rule	22
111	8/29/2011	HUD	SAFE Mortgage Licensing Act: Minimum Licensing Standards and Oversight Responsibilities	38
112	10/1/2011	FED	CARD Act Clarifications	93
113	10/1/2011	FED	Debit Interchange Fee and Routing Regulations (Regulation II)	82
114	10/1/2011	FED	Federal Reserve Board’s Interim Final Rule on the Interchange Fee Fraud-Prevention Adjustment	11
115	10/19/2011	Treasury	Indorsement and Payment of Checks Drawn on the United States Treasury	3
116	10/31/2011	NCUA	Net Worth & Equity Ratio	4
117	11/14/2011	Labor	Notification of Employee Rights under the National Labor Relations Act	44
118	11/30/2011	NCUA	NCUA Remittance Transfers Rule	2

119	12/2/2011	NCUA	Community Development Revolving Loan Fund (CDRLF) Access for Credit Unions	8
120	12/23/2011	NCUA	Low-Income Designation – Technical Amendment	1
121	1/1/2012	NCUA	Accuracy of Advertising and Notice of Insured Status	2
122	1/23/2012	NCUA	Corporate Credit Union Rule – Technical Amendment	3
123	4/19/2012	IRS	Guidance on Reporting Interest Paid to Nonresident Aliens	5
124	5/31/2012	NCUA	Corporate Credit Union Follow-up Rule	10
125	6/29/2012	CFPB	Rules of Practice for Adjudication Proceedings	44
126	6/29/2012	CFPB	Rules Relating to Investigations Final Rule	11
127	7/2/2012	NCUA	Regulatory Flexibility Program	12
128	7/2/2012	NCUA	Regulatory and Reporting Treatment of Troubled Debt Restructurings	12
129	7/12/2012	FED	Regulation J (Collection of Checks and Other Items by Federal Reserve Banks, Etc)	7
130	7/12/2012	FED	Regulation D (Reserve Requirements of Depository Institutions: Reserves Simplification)	8
131	8/16/2012	CFPB	Confidential Treatment of Privileged Information Final Rule	7
132	9/17/2012	CFTC	End-User Exemption to the Mandatory Clearing of Swaps	32
133	9/30/2012	NCUA	Interest Rate Risk Policy and Program Final Rule	12
134	10/1/2012	FED	Debit Interchange Fee and Routing Regulations (Regulation II) -Fraud	25
135	11/23/2012	CFPB	Delayed Implementation of Certain New Mortgage Disclosures	9
136	11/30/2012	FED	Reserve Requirements of Depository Institutions	2

137	12/13/2012	NCUA	Fidelity Bond	2
138	12/15/2012	FASB	Guidance on Troubled Debt Restructurings	27
139	1/18/2013	NCUA	Treasury Tax and Loan Depositaries; Depositaries and Financial Agents of the Government Final Rule	1
140	2/19/2013	NCUA	Acceptance Deadline - Low-Income Designation Final Rule	2
141	2/19/2013	NCUA	Definition of a “Small Credit Union” Final Rule	6
142	2/19/2013	NCUA	Definition of “Troubled Condition” Final Rule	3
143	3/18/2013	FHA	Implementation of the Fair Housing Act’s Discriminatory Effects Standard Final Rule	23
144	3/26/2013	CFPB	Disclosures at Automated Teller Machines Final Rule - Reg E	4
145	3/28/2013	CFPB	Credit Card Limitations on Fees Final Rule - Reg Z	4
146	3/29/2013	NCUA	Investment and Deposit Activities (TIPS) Final Rule	2
147	4/1/2013	NCUA	Rural District Final Rule	3
148	5/31/2013	NCUA	Technical Amendments Final Rule	6
149	6/1/2013	CFPB	Escrow Accounts Final Rule - Reg Z	32
150	6/1/2013	CFPB	Escrow Accounts Amendments Final Rule - Reg Z	8
151	6/11/2013	NCUA	Alternatives to the Use of Credit Ratings Final Rule	9
152	6/28/2013	FMS	Garnishment of Accounts Containing Federal Benefits Final Rule	12
153	7/1/2013	FTC	COPPA Final Rule	43
154	7/25/2013	NCUA	Loan Participations Final Rule	12
155	10/28/2013	CFPB	Remittance Transfers 2012 Final Rule - Reg E	117

156	10/28/2013	CFPB	Remittance Transfers Safe Harbor, Preauthorized Transfers Final Rule - Reg E	46
157	10/28/2013	CFPB	Remittance Transfers 2013 Final Rule - Reg E	61
158	11/18/2013	NCUA	Federal Credit Union Ownership of Fixed Assets Final Rule	4
159	11/4/2013	CFPB	Consumer's Independent Ability to Pay Final Rule - Reg Z	22
160	12/19/2013	NCUA	Charitable Donation Accounts Final Rule	3
161	1/1/2014	NCUA	Electronic Filing of Financial and Other Reports Final Rule	2
162	1/3/2014	FinCEN	BSA Definitions - Definitions of Transmittal of Funds and Funds Transfer Final Rule	4
163	1/10/2014	CFPB	Mortgage Loan Origination Compensation Final Rule	148
164	1/10/2014	CFPB	Mortgage Servicing Final Rule - Reg X	203
165	1/10/2014	CFPB	Mortgage Servicing Final Rule - Reg Z	120
166	1/10/2014	CFPB	Ability to Repay / QM Final Rule	213
167	1/10/2014	CFPB	Ability to Repay / QM - Exemptions, Modifications, and Clarifications	15
168	1/10/2014	CFPB	QM and Mortgage Servicing Clarifications	42
169	1/10/2014	CFPB	HOEPA – "High-Cost Mortgage" Loans Final Rule	120
170	1/10/2014	CFPB	Homeownership Counseling Organizations Lists Interpretive Rule	2
171	1/18/2014	CFPB	Regulation B - Copies of Appraisals Final Rule	35
172	1/18/2014	NCUA	Interagency Higher-Priced Mortgage Appraisals Final Rule	80
173	1/18/2014	NCUA	Interagency Higher-Priced Mortgage Appraisals Supplemental Final Rule	69

174	3/3/2014	NCUA	Derivatives Final Rule	19
175	3/31/2014	NCUA	Liquidity and Contingency Funding Plans Final Rule	4
176	5/30/2014	NCUA	Capital Planning and Stress Testing	7
177	7/1/2014	IRS	FATCA- (Temporary Regulations under Chapter 4)	54
178	7/1/2014	IRS	FATCA - (Temporary Regulations under Chapters 3 and 61)	84
179	6/30/2014	NCUA	Credit Union Service Organizations (CUSOs) Final Rule	13
180	7/1/2014	IRS	FATCA Final Rule	123
181	7/17/2014	CFPB	Application of Regulation Z's Ability-to-Repay Rule to Certain Situations Involving Successors-in-Interest	3
182	7/17/2014	CFPB	Policy Guidance on Supervisory and Enforcement Considerations Relevant to Mortgage Brokers Transitioning to Mini-Correspondent Lenders	5
183	7/28/2014	NCUA	Voluntary Liquidation Final Rule	3
184	10/3/2014	NCUA	Unfair or Deceptive Acts or Practices; Technical Amendments	4
185	10/23/2014	CFPB	Compliance Bulletin and Policy Guidance—Mortgage Servicing Transfers	5
186	10/28/2014	CFPB	Annual Privacy Notice Requirement Under the Gramm-Leach-Bliley Act (Regulation P)	26
187	11/17/2014	CFPB	Electronic Fund Transfers (Regulation E) (Remittances Temporary Exception)	26
188	1/10/2015	HUD	Federal Housing Administration (FHA): Adjustable Rate Mortgage Notification Requirements and Look-Back Period for FHA-Insured Single Family Mortgages	3
189	1/20/2015	NCUA	Appraisals; Appraisals; Availability to Applicants & Requirements for Transactions on Existing Extension of Credit	3

190	1/21/2015	HUD	Federal Housing Administration (FHA): Handling Prepayments: Eliminating Post-Payment Interest Charges	4
191	8/1/2015	CFPB	Integrated Mortgage Disclosures under TILA and RESPA Final Rule	1273
			Total Pages:	**5930**