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on behalf of

America's Credit Unions

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Opening/Introduction

Good morning, I am Karen Harbin, President and CEO of Commonwealth Credit Union, headquartered in Frankfort, Kentucky. Since opening our doors in 1951, we have expanded to meet the needs of our member-owners, now over 120,000 strong. We are a state-chartered credit union with over $2 billion in assets and 17 branches in the Central Kentucky and Louisville Metro areas. Our credit union members elect a Board of Directors from their peers – the people they live and work with to provide oversight to the credit union. These Board members are unpaid volunteers.

We have stood by generations of families through both prosperous and challenging times, remaining abreast of technological advancements while always prioritizing the importance of personal connection and the difference we make in the lives of the members we serve. As a not-for-profit financial cooperative, we take great pride and effort to support the varying needs of the communities in which we serve as well. We offer extensive financial education programs facilitated by a team of professional educators who collaborate with local schools, colleges, and community organizations. Our aim is to educate and empower individuals with the necessary tools to enhance their financial well-being and health.

While credit unions nationwide have continued to grow over the past few years, now serving over 140 million consumers, the vast majority are small institutions with limited resources. As a matter of fact, the largest bank has 20 times the assets of the largest credit union. Furthermore, three banks earned more than the entire credit union industry did in 2023.

Our focus supports the economically vulnerable. As a credit union serving a number of low-income communities, over half of our loan portfolio addresses these economically vulnerable areas within Kentucky. Furthermore, in times of economic distress or personal hardship for our members, we offer assistance through several methods including low-interest loans, fee waivers, and flexible payment options.

Increasing Regulatory Burdens Hamper Ability to Meet Needs of Credit Union Members

These financial assistance services for our members are under threat with mounting regulatory requirements and expectations from a number of federal regulators. These high levels of regulatory burden are hampering many credit unions from fulfilling their mission of serving low- and moderate-income (LMI) Americans. We support tailored and rightsized regulation, but diverting resources toward meeting excessive regulatory compliance has ripple effects, one of the more prominent being a trend toward industry consolidation, which ironically threatens consumer access to credit, disproportionately impacts LMI communities, and strains the entire industry.

The Consumer Financial Protection Bureau

The Credit Union Difference

Credit unions are the original consumer financial protectors. Because of the not-for-profit, member-owned cooperative structure, credit unions are not subject to the same profit-first motives that have become characteristic of for-profit financial services providers. This distinction, combined with a track record of providing consumer-friendly financial services, is a key reason that rules and regulations should be tailored so they are not overly burdensome on credit unions.

Credit unions play an essential role in helping individuals, small businesses, and communities prosper by assisting with daily financial management and fostering stronger financial futures. This is evidenced by the Consumer Financial Protection Bureau's (CFPB or Bureau) recent report on credit card rates in which the Bureau found that small banks and credit unions tended to offer cheaper interest rates than the largest 25 credit card companies across all credit score tiers. This trend goes beyond credit cards to auto and mortgage lending as well. Credit unions continue to offer members affordable interest rates, which keep monthly payments lower. The median interest rate for a 30-year mortgage for near-prime borrowers at a credit union in September 2023 was 8.68 percent. The rate for the same loan maturity and credit profile borrowers was 9.41 percent at banks.

The median credit union interest rate for a $40,000 auto loan with a 6-year term in September 2023 ranged from 7.03 percent for super prime borrowers to 11.02 percent for deep subprime borrowers. The rate for the same loan maturity and credit profile borrowers ranged from 7.88 percent to 17.40 percent at banks, and 6.46 percent to 18.14 percent at finance companies. Using recent pricing differences, we found that credit unions save consumers with lower credit scores up to $10,000 over the life of a typical car loan and as much as $120,000 over the life of a typical home loan.

The credit union industry unambiguously stands out as consumers' best choice for financial services. Member-ownership and not-for-profit status results in a wide range of pro-consumer credit union behaviors and substantial pro-social outcomes that are too often absent in the for-profit sector. There is definitely a large, measurable "transformative power" associated with cooperative finance.

CFPB Governance Modernization

America's Credit Unions believes that, given the broad authority and awesome responsibility vested in the CFPB, a five-person commission has distinct consumer benefits over a single director. Regardless of how qualified one person may be, including the current leadership of the agency, a commission would allow multiple perspectives and robust discussion of consumer protection issues throughout the decision-making process. Additionally, a commission helps ensure some continuity of expertise and rulemaking. The current single director structure can lead to uncertainty during the transition from one Presidential administration to another. The U.S. Supreme Court highlighted this fact when it released a decision in *Seila Law v. the Consumer Financial Protection Bureau* that found the single director, removal only for "just cause" structure of the CFPB to be unconstitutional. It is with this in mind that we urge Congressional action on legislation to transform the structure of the CFPB from a single director to a bipartisan commission. We support legislation that would improve the Bureau by making this change, such as H.R. 1410, the Consumer Financial Protection Commission Act, and H.R. 2798, the CFPB Transparency and Accountability Reform Act.

Unfortunately, under the current structure, the CFPB has missed many opportunities to leverage credit unions' mission and history to the benefit of consumers and finalized regulations that ultimately hampered credit unions and their members. Consumers lose when one-size-fits-all rules force credit unions to pull back safe and affordable options from the market, pushing consumers into the arms of entities engaged in the very activity the CFPB's rules were designed to curtail. Under Director Rohit Chopra's leadership, the Bureau has yet again missed numerous opportunities to recalibrate its approach to regulation in a manner that fulfills its consumer protection mission without impeding consumers' access to credit or safe and affordable financial products and services.

Principles That Should Guide CFPB Rulemaking

We would like to take this opportunity to highlight for Congress several key principles we believe should guide any CFPB action. These principles were developed in consultation with our member credit unions.

- *Use the Bureau's authority in a manner consistent with the original purpose of the CFPB and the spirit of the Dodd–Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act)*

Congress created the CFPB specifically to address the irresponsible lending and banking practices of large, too-big-to-fail banks and unregulated sectors of the consumer financial services marketplace. These entities are where the Bureau should dedicate most of its time and resources. With more financial technology companies offering à la carte financial services through digital-only platforms, the CFPB should be focused on ensuring those unregulated and under-supervised institutions do not put consumers at risk. If the Bureau spent fewer resources on regulating and supervising credit unions and other small lenders subject to federal prudential regulation, then it would have more available to focus on unregulated institutions and the businesses actively engaged in objectionable practices that exploit consumers. We believe this balance can be accomplished without sacrificing important consumer protections.

Credit unions remain one of the most heavily regulated entities in the country, even though they did not engage in the anti-consumer practices that caused the financial crisis. Despite our pro-consumer history, credit unions have repeatedly been lumped in with others through the promulgation of overly broad rulemakings, increasing compliance costs without a material benefit for consumers. In fact, the increasing cost and complexity of regulatory compliance remains a contributing factor in the significant consolidation taking place among community-based financial institutions. Ultimately, consumers lose when fewer choices are in the marketplace, resulting in a higher cost of financial services and reduced access to local community-based providers.

- *Appropriately tailor regulations to reduce disruption for community-based financial institutions*

In the wake of the financial crisis, Congress contemplated the need for exemptions to certain rules and crafted the Dodd-Frank Act to authorize the Bureau to tailor its rules to avoid adverse outcomes for consumers and regulated entities. Congress deliberately provided this express authority in Section 1022 of the Dodd-Frank Act:

> *The Bureau, by rule, may conditionally or unconditionally exempt* ***any class of covered persons****, service providers or consumer financial products or services from any provision of this title, or from any rule issued under this title (Emphasis added).*

These words are unambiguous, and Congress clearly granted the Bureau broad authority to tailor regulations in a manner consistent with the best interest of consumers. We appreciate that the Bureau has used its Section 1022 authority in some rulemakings to create exemptions based on asset size, loan volume, the merits of a specific product, or other factors. However, we believe the Bureau should use its exemption authority more consistently and to greater effect.

Credit unions and Credit Union Service Organizations (CUSOs) should be considered for and receive appropriate exemptions from some of the Bureau's regulatory requirements. It is critically important for the Bureau to understand that credit unions are not asking to be exempt from all its rules; instead, we ask the Bureau to carefully consider the downstream impact of its rules and how those rules—without appropriate tailoring—could negatively affect the ability of consumers to access financial products and services from reputable, community-based financial institutions.

- *Be consistent and transparent during the development and implementation of rulemakings and supervision and enforcement policies*

The current CFPB structure vests substantial authority with the Director. It is critical for the CFPB Director to avoid disrupting the efficient functioning of markets due to unnecessary secrecy, surprise regulation, "gotcha" enforcement, or the pursuit of political goals. Often, it is consumers themselves that are negatively affected by opaque, abrupt, or extreme changes in policy from one administration to the next.

We believe the CFPB should emphasize regular and open communication with financial services providers and be transparent during the policymaking process. An open communication posture would generate goodwill with industry and further both consumer protections and proper due process. To that end, we are ready and willing to assist in communicating and amplifying any critical information from the Bureau to credit unions and their members. We are also at the Bureau's disposal to solicit feedback from our members, as stakeholder input is critical to an efficient and effective regulatory environment.

Relatedly, we encourage the Bureau to regularly conduct reviews of its regulations in the interest of streamlining and eliminating outdated or superfluous requirements, increasing the efficiency of rules, or to provide exemptions where appropriate. However, it is critical that the Bureau keep in mind that any change in regulation—even a change intended to reduce complexity—always comes with a cost. For most Bureau rulemakings, the Dodd- Frank Act and the Regulatory Flexibility Act provide specified review processes intended to assist in identifying necessary or appropriate regulatory changes after the rule has been "in the field" for a reasonable time. Therefore, the Bureau should reserve the adoption of substantial changes to rules or policies for cases where there are compelling data-based reasons for doing so or an imminent need that addresses a specified consumer impact.

- *Consult with NCUA during the policymaking process and avoid implementing duplicative or contradictory policies*

Throughout their history, credit unions have been supervised by several different federal agencies. The lesson that comes through clearly, based on these different supervisory arrangements, is that credit unions are best positioned to succeed when policy decisions affecting them are made by a regulatory agency that has significant familiarity with the characteristics that differentiate them from other financial services providers. The National Credit Union Administration (NCUA or agency), due to its half-century of experience regulating credit unions, has a special understanding of the credit union model as well as the environmental and operational challenges credit unions face daily. For that reason, the CFPB should work more closely with the agency throughout the policymaking process and avoid implementing policies that conflict with or are duplicative of those issued by the agency, especially regarding examinations.

- *Provide certainty to regulated entities by adopting clear "rules of the road" and prioritizing internal consistency*

Since the passage of the Dodd-Frank Act, there has been a massive increase in new consumer financial services regulations. This environment is particularly burdensome for credit unions which, unlike big banks, do not have scores of legal experts in-house to assist with compliance matters. Given the heightened nature of the regulatory landscape, it is important that the Bureau provide certainty to regulated entities through the adoption of clear "rules of the road," internal consistency from the Director's office down to the field examiners, and robust guidance and implementation support.

In that spirit, we encourage the Bureau to provide helpful compliance resources, especially interactive webinars on final rules and Small Entity Compliance Guides, that help stakeholders understand regulatory expectations. We also encourage the Bureau to be proactive and continue providing compliance resources after final action as questions in need of clarification are identified. For example, the Bureau's recent implementation of an Advisory Opinion program is a positive development and should be maintained.

Regarding clarity, we oppose the Bureau adopting a "regulation by enforcement" approach to policymaking. We believe if the Bureau wants to make actionable policy, then it should propose clear regulations pursuant to the Administrative Procedure Act (APA) process instead of using its enforcement authority against financial institutions expecting the subsequent consent order to serve as a means for others to determine what practices are in violation of the law. We also caution against an unproductive and inflammatory "regulation by press release" approach to governance characterized by clearly politicized press releases intended to serve as a bully pulpit. The Bureau's recent reliance on blog posts, guidance, and even amicus brief filings to issue proclamations regarding the application of consumer financial protection laws is inappropriate and denies stakeholders the opportunity to participate in the statutorily mandated notice and comment process.

- *Conduct thorough research prior to the adoption of a new rule or policy and base policy decisions on relevant data*

The Bureau prides itself on being a modern, data-driven regulator. Former Director Cordray often referred to the data underlying consumer complaints as the Bureau's "compass," playing a key role in identifying and prioritizing the Bureau's actions, including in the realm of rulemakings. However, data for data's sake is insufficient, and it is critical that the Bureau's policy and regulatory decisions be wholly supported by relevant, timely, representative data. Unfortunately, it has been common for a CFPB rulemaking to lack (or at least appear to the public to lack) sufficient evidence, data, research, or other information to substantiate assertions within the rulemaking. The Bureau has also refused, in certain instances, to publicly share the data upon which it relies to justify a rulemaking—in direct contravention of its obligations under the APA. We challenge the CFPB to set a new standard for evidence-based rulemaking decisions and processes.

It is critical that the Bureau base its decisions on data specific to the entities it intends to regulate through an action. For example, relying on bank data to justify a rulemaking that also covers credit unions without evaluating credit union-specific data is misguided. Almost equally critical is that the Bureau be wholly transparent in its reliance on data, ensuring the public has access to the same information—absent confidential and personally-identifiable information—the Bureau relies on as a foundation for its rulemakings.

- *Ensure continued access to credit from reputable providers*

Credit unions often provide the safest and most affordable loan options for consumers in need of credit. When developing rulemakings overseeing lending, the Bureau should carefully evaluate and consider the impact a policy decision may have on the availability of credit for consumers, especially when the action is likely to impact the cost of credit. For example, we have called for the Bureau's rule governing short-term, small dollar lending to be meaningfully tailored to address predatory payday lending while not inhibiting credit unions from offering responsible credit products to members in need. It is important that the CFPB strike an appropriate balance between its consumer protection mission and the availability of products and services. This balance is critical whether the product is a mortgage, credit card, or emergency loan. Many consumers rely on access to credit to manage their everyday finances, and the Bureau should ensure reputable providers, especially community-based providers, are able to meet those needs.

- *Encourage and support innovation in the consumer financial services marketplace*

Innovation through technology and other creative solutions has the potential to enhance the delivery and quality of financial products and services to consumers. In recent years, credit unions have been at the vanguard of innovation as a byproduct of their cooperative nature, member-driven focus, and relatively small size. Consumers benefit when financial institutions are provided with more opportunities, under the careful oversight of regulators, to pursue fresh answers to traditional questions. However, the Bureau should not approach innovation in a manner that places traditional depository institutions at a disadvantage compared to another business model. Ultimately, credit unions must be given equal access to innovation policies and programs.

Recent CFPB Overreaches Threaten Credit Unions' Ability to Serve Consumers

"Junk Fees"

In 2022, the CFPB launched an initiative to target standard fees charged by credit providers that included sensible payment guardrails such as overdraft and credit card late fees. This initiative has been mislabeled, with the CFPB calling lawful payment incentives "junk fees." These fees bear no resemblance to the type of hotel and resort fees referenced by others as "junk fees" and, in contrast, are all subject to comprehensive federal or state laws and regulations that include clear and conspicuous consumer disclosures. Sensible payment guardrails are not unfair, deceptive, or abusive, and there are mechanisms in place to ensure consumers are well-informed of the fees. The CFPB's guidance on these fees falsely suggests that these fees are for the sole benefit of the financial institution; however, these fees are used to help the consumer make responsible financial decisions and encourage on-time payments or avoid violating the terms of financial agreements. These fees also enable companies to offset the costs of late payments and their associated risks so that they can continue to offer the financial products that people want and need, particularly to financially vulnerable communities and individuals trying to build credit.

The characterization of these well-disclosed, regulated fees as "junk fees" and the conflation of member-driven financial institutions with financial bad actors has a very real, very harmful impact on the ability of credit unions to serve their members. If credit union members are consistently told by federal regulators, and even the President, that their financial institution is out to get them, it will erode the trust and relationship-focused service that is so crucial to the credit union difference.

Furthermore, the reduction in fee revenue is especially onerous for small credit unions. Although there is an asset-based exemption for the overdraft proposed rule, market pressures will impact all financial institutions, and small credit unions will struggle to find non-essential costs to cut in response to decreased revenue. The CFPB's recent Credit Card Rate Report found that high levels of concentration and evidence of anti-competitive behavior in the consumer credit card market contributed to higher rates for larger issuers. This is not a coincidence, and if burdensome regulation makes it more difficult for small financial institutions to operate, we will see fewer banking options, less competition, and higher prices.

Finally, these regulations do not exist in a vacuum. My colleagues in the credit union industry feel as though they are dying a death of a thousand cuts. Their revenue on all fronts, from fees to credit card interchange, is under attack, and their costs to comply with ever-increasing regulation continue to mount. Credit unions want the Bureau to know that they are trying to embody the pro-consumer, relationship banking ethos that the Bureau celebrates, but they feel that the Bureau is uninterested in hearing how difficult it is becoming to do.

Overdraft Rule

One of the most recent attacks on well-disclosed, regulated fees is the CFPB’s proposed rule to amend Regulations E and Z, specifically as it relates to updating regulatory exceptions for overdraft credit provided by financial institutions with more than $10 billion in assets. As a credit union with less than $10 billion in assets, we are deeply committed to our mission of promoting financial inclusion and providing affordable, accessible financial services to our members, many of whom are from underserved communities. We are concerned that the proposed rule, as currently drafted, may inadvertently undermine the ability of smaller financial institutions like ours to offer services that are critical to our members' financial well-being.

Like numerous other credit unions, Commonwealth Credit Union offers services tailored to assist our members in managing their finances effectively. We provide various options to cover instances where members unintentionally or intentionally overdraft their accounts, including checks, automatic payments, and debit card transactions.

We prioritize compliant and user-friendly options for our checking account holders. Members can choose to have funds automatically transferred from their savings account if they overdraw their checking account. Additionally, they can opt in to a service where our credit union covers the transaction temporarily, allowing the account to go negative until a deposit is made, albeit with a fee associated. This service, known as Overdraft Protection (ODP), is highly valued by our members.

Our ODP program ensures that members' checks and automatic payments are processed without disruption, preventing them from incurring additional expenses such as returned check fees. We also cover debit card transactions, ensuring that members can access necessities when needed, thus averting potential embarrassments at checkout counters or even critical situations like being unable to purchase groceries due to a shortfall in funds.

To ensure transparency and understanding, we maintain regular communication with members who use the ODP service, providing detailed information about limits, fees, and how the service operates. We often receive expressions of gratitude from members who appreciate the assistance in covering transactions.

We encountered one gentleman who utilized the service more than 10 times within a month. When we reached out to him, he said, "Yes, I understand. I am well-informed about the workings of the service. However, I'm currently unable to secure a loan at the moment and rely on this to effectively manage my cash flow. Please don’t take it away." This sentiment is frequently echoed by our members. It is not within our purview to dictate their account management strategies; rather, our responsibility lies in furnishing them with viable services and comprehensive information about our products, enabling them to make informed decisions regarding their financial management.

The utilization rate of ODP stands at approximately 32 percent of our checking accounts monthly, with over 85 percent of account holders having access to all or part of the service as a precautionary measure. We observe a mix of regular and first-time users, and refund about 5 percent of fees, mainly to first-time users, as part of our commitment to supporting them through financial challenges.

For many individuals, ODP serves as a lifeline, bridging the gap between paychecks and covering essential expenses like utilities and groceries. Without this service, they would face increased fees, disrupted services, and financial insecurity.

The proposed rule’s requirement to treat overdraft services as extensions of credit subject to Regulations E and Z, unless fees are nominal and only cover applicable costs and losses, although not directly applicable to smaller institutions, may force credit unions like ours to significantly alter or eliminate these services. As regulatory mandates reduce or remove the prevalence of overdraft services for the largest financial institutions, market pressures will necessitate that smaller credit unions alter their overdraft programs in response. Without the ability to benefit from the same economies of scale that might allow larger institutions to weather a reduction in fee revenue, these changes could make it unsustainable for smaller institutions to offer overdraft protection, disproportionately affecting those who rely on it the most.

We believe that financial institutions should retain the flexibility to set fees for services like overdraft protection. This flexibility allows us to tailor our services to the needs of our diverse membership, balancing the need to cover costs and manage risk with the commitment to keeping our products and services affordable. A blanket approach in which above breakeven overdraft is deemed open-ended credit does not account for the downstream impacts to smaller institutions and the unique circumstances of our credit union and varied needs of our members.

Moreover, the ability to set and adjust fees enables us to innovate and introduce new services that can help members manage their finances more effectively, such as low-cost, short-term credit options that can serve as alternatives to traditional overdraft protection. If the proposed rule drives down the average overdraft fee, these innovations would be at risk.

Instead of imposing restrictive fee structures, we advocate for a greater emphasis on financial literacy and education efforts. Many consumers benefit from overdraft services because they rely on these financial lifelines to pay for purchases during moments of sudden need or between paychecks. Although a small subset of these consumers may become overly reliant on overdraft services, the solution should not be to regulate it out of existence. A number of institutions report that some members knowingly want to use this service regularly and have indicated that they are willing to change institutions if it is not available. We believe government focus should be on investing in comprehensive financial education programs that can empower consumers to make informed decisions about their money, reduce reliance on overdraft services, understand other options available, and improve their overall financial health.

Our credit union is deeply committed to financial education, offering workshops, online resources, and one-on-one counseling to help our members build budgeting skills, understand credit, and plan for their financial futures. Commonwealth Credit Union is pleased to be a sponsor of several financial education initiatives in Kentucky, and believes that expanding these efforts, with support from regulators and policymakers, can have a profound impact on financial inclusion and consumer well-being.

America's Credit Unions believes that the proposed rule on overdraft credit may have unintended consequences that could hinder credit unions' ability to serve our members effectively. We urge the CFPB to consider the unique role of smaller financial institutions in promoting financial inclusion and to rescind the rule and support a paradigm that balances consumer protection with the need for flexibility and innovation in financial services. Instead of imposing a rule on overdraft fees with industry-wide implications, we encourage the CFPB to support efforts to enhance financial literacy and empower consumers to make informed financial decisions. By working together, we can ensure that all consumers have access to affordable, responsible financial services that meet their needs and support their long-term financial health.

Credit Card Late Fees

The CFPB's rule to amend Regulation Z to slash credit card late fees to ensure they are "reasonable and proportional" aims to assist LMI borrowers. However, we feel the rule will instead have the unintended consequence of reducing competition in the credit card market, leading to further consolidation among community-based financial institutions, and reducing access to credit. The current regulatory structure and safe harbor limits for credit card late fees have resulted in clear disclosures to consumers, providing ample opportunity for comparison shopping, and a deterrence effect that encourages consumers to make timely payments on their accounts.

The new safe harbor limit is not only arbitrary but is also unlikely to reduce consumer indebtedness. In fact, this rule would have a disproportionate impact on LMI borrowers and those with thin credit files by limiting the availability of safe and affordable products and services because credit unions and other institutions will be forced to make difficult decisions about their offerings. Some smaller credit unions may be forced to reevaluate or eliminate their credit card programs altogether because the economics no longer work. Credit unions are also unique in that they are subject to an interest rate ceiling established under the Federal Credit Union Act (FCU Act). This statutory limitation further constrains credit unions' revenue options with respect to credit cards, whereas big banks will likely increase their interest rates to compensate for reduced late fee revenue. If credit unions like ours are forced to tighten their credit criteria or exit the credit card market because of this rule, the impact on underserved communities will be immeasurable.

We encourage you to exercise your oversight over this final rule as the CFPB's data and analysis were cursory at best and the Bureau did not seek the input of small financial institutions as required under the law.

NSF Rule/UDAAP

The uncertainty surrounding the abusiveness prong of unfair, deceptive, or abusive acts and practices (UDAAP) has been a source of concern for credit unions for many years. The recent proposed rule prohibiting nonsufficient funds (NSF) fees on instantaneously declined transactions puts the logic of the Bureau's 2023 Policy Statement on Abusive Acts or Practices into action, and we are troubled by the Bureau's interpretation regarding the test for abusive conduct. Specifically, that conduct is abusive if it takes unreasonable advantage of a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service. But in the Bureau's interpretation, there is no requirement that the consumer's lack of understanding be reasonable, and the Bureau unreasonably concludes that the fact that a consumer decides to take a risk must necessarily mean that the consumer did not understand the risk.

If a consumer chose to go ahead and initiate a transaction even though they were uncertain if they had sufficient funds, it does not necessarily mean that they lacked understanding of the risk. It could just as easily mean the consumer understood the risks, and chose to initiate the transaction anyway, hoping that their account had sufficient funds. Through this interpretation, the Bureau has removed all responsibility from the consumer and shifted the burden entirely to financial institutions. Furthermore, it has created a situation in which any product or service could be deemed too complex for a consumer to understand, and if a financial institution charges a fee in relation to that product or service, it could be subject to an allegation that it violated the abusiveness prong of UDAAP.

This interpretation will chill innovation and place credit unions in a position where they will be extremely hesitant to offer new products or services to their members, for fear that they might be considered abusive. Smaller credit unions that cannot afford to take the risk of UDAAP enforcements will be incentivized to only offer the most basic services, further reducing their ability to compete.

We urge the Bureau to issue a rulemaking to further define the abusiveness standard and work to ensure an equitable framework that recognizes the role of financial responsibility for consumers as much as it does the responsibility of their financial institution. While any guidance or additional clarity is crucial to providing credit unions with the rules of the road when it comes to UDAAP, a single policy statement with overly broad prohibitions is insufficient. A rulemaking to further define abusiveness through the notice and comment rulemaking process would give financial institutions confidence in the knowledge that an act or practice is or is not abusive and would allow the entities that are governed by UDAAP to better understand their obligations under those prohibitions.

Regulation E

On various occasions, certain members of Congress have asked the CFPB to disregard the plain meaning of the Electronic Fund Transfer Act (EFTA) and misinterpret the statute to assign greater liability to financial institutions for certain fraudulent transactions that consumers have authorized by their own volition.

Recklessly interpreting the EFTA to force credit unions to absorb an even greater share of fraud would have broad systemic effects that could undermine confidence in consumer payment systems and the health of financial institutions. Credit unions are committed to combatting fraud, educating members about scams, and reporting criminal activity to appropriate law enforcement channels.

Credit unions invest significantly in both security and compliance management systems to prevent unauthorized electronic fund transfers and support faster, innovative payment options for their members. The credit union industry's commitment to relationship banking also gives members confidence that if they have a problem with a particular payment, they can count on their credit union to make every effort to resolve the issue. This emphasis on high touch service means that members will often seek and receive the help of their credit union even when a transaction primarily implicates the services of a third party with which the credit union has no formal, direct relationship. However, relationship banking is less viable in a regulatory environment where the CFPB is ambivalent toward credit unions' finite capacity to absorb fraud and proposes rules that threaten to erode income.

Regulatory antagonism toward overdraft programs, fees, and other responsibly managed components of credit union product portfolios could jeopardize support for member-focused programs, including educational and financial literacy resources aimed at protecting members from scams. If the CFPB is truly concerned about the impact of fraud on consumers, it should provide assurance that it will adhere to the plain language of the EFTA and not entertain interpretive carveouts that could be exploited by criminals.

Section 1033

The CFBP's proposed rule to implement Section 1033 of the Dodd-Frank Act also contributes to significant uncertainty about how fraud might propagate through new data sharing mechanisms. Regulatory dictates to compel data sharing with third parties could have broad systemic effects, not only for credit unions, but all financial institutions covered by the CFPB's open banking proposal. Credit unions support consumers' rights to access and control their personal financial data but have a responsibility to ensure credit union members' data remains safe, secure, and private. However, the CFPB's open banking rulemaking does little to support these core obligations. Instead, the CFPB places the onus of due diligence on credit unions and other covered data providers that must generally acquiesce to nominally authorized third parties seeking access to data. Not all third parties will be subject to the regular supervision and regulation that applies to credit unions. Furthermore, allocating the costs of events like data breaches or seeking reimbursement for fraud losses caused by a third party's mishandling of data would be unclear under the proposal and likely dependent on state law because the CFPB has chosen not to clearly address questions of liability or indemnity.

Any data sharing rulemaking must consider the necessity of all parties safeguarding consumer information. Yet, the CFPB looks primarily to credit unions and other account-holding financial institutions to manage the risks and subsidize the creation of an open banking environment. While the proposal permits a covered data provider to manage third party access based on certain risk management concerns, these concerns must align with a criteria of reasonableness that only the CFPB can define. From a practical standpoint, the CFPB has proposed a rule where it would assume a role traditionally filled by the functional banking regulators, such as the NCUA, that are tasked with overseeing information security programs at their regulated institutions. Any proposal that vests the CFPB with the power to dictate risk management tolerances for credit unions and other depositories is jurisdictional overreach. The CFPB cannot have exclusive say as to whether a credit union's denial of a third party is reasonable or not in the context of risk management.

1071 Rule and Impact on Serving Small Businesses

It is important that the CFPB not harm small businesses or small financial institutions, such as community credit unions. There is widespread concern that the complexity and significant costs of the CFPB's Section 1071 rule will weigh disproportionately on credit unions in ways that ultimately lead to fewer and less favorable outcomes for all small business borrowers. The overly broad scope of the CFPB's rule will substantially raise the cost of small business borrowing and require covered financial institutions to collect data on businesses that are not "small businesses" by any traditional metric. Rulemaking from Section 1071 should be appropriately tailored to ensure the health and financial needs of truly small businesses can continue to be met.

Furthermore, the tiered compliance schedule established by the CFPB is aggressive even for the largest, most technologically savvy commercial lenders. We support efforts to establish an appropriate compliance timeline for Section 1071 so that credit unions and their vendors have sufficient time to effectively implement these complex changes.

Small businesses are the life blood of our economy and communities. While facing unique challenges, they play a vital role in driving innovation and creating local jobs. Credit unions need to maintain the ability to provide flexible lending options and personalized financial support that empowers small businesses to succeed. The 1071 rule from the CFPB interferes with our ability to serve small business owners with affordable lending products.

Offering guidance throughout the lending process is crucial for new and emerging business owners. In a recent case involving a small florist, Commonwealth Credit Union provided assistance by outlining the steps involved in purchasing their first commercial building with a 15-year amortization. This enabled the florist to successfully relocate his business to a property he now owns, which is more cost-effective than the small space he had previously rented. By supporting this business owner with the intricacies of financing commercial property and accompanying him throughout the process, we empowered him to achieve his first business milestone. This ensured the sustainability of his business within the community and filled him with pride.

With established businesses looking to create additional revenue sources, Commonwealth Credit Union has also helped the owner of an HVAC company develop a new income stream to diversify his cash flow by providing financing for his first rental property. Being local and familiar with the market, we were able to work through the evaluation of the new business opportunity quickly, ensuring the business owner had the opportunity to bolster earnings while providing housing opportunities for the community.

These are just a couple of examples of the many stories we have that demonstrate the impact Commonwealth Credit Union and credit unions across the country have on the success of local businesses. Providing personalized attention and customized solutions, which are not readily available through larger lenders, is what makes credit unions vital to the growth of small businesses.

Credit unions are adept at aiding when businesses and individual borrowers fail to meet the standards for premium borrowing ratios, and when cash flows are tighter than usual. However, increased regulatory burdens from the CFPB’s 1071 rule impose limitations that impede credit unions' abilities to nurture small business growth, potentially harming the economies of small communities across the country. The compliance burden that would be added to credit unions would make examples like the ones I shared harder to come by, because the focus of the lender would be on checking certain boxes in a regulated structure, rather than adapting to the specific needs of the borrower.

Other Recent Efforts by Federal Regulators Could Hurt Ability to Serve Consumers

The Federal Reserve Board's Regulation II Proposal (Debit Interchange)

On October 25, 2023, the Board of Governors of the Federal Reserve (Board) issued a notice of proposed rulemaking (NPRM) that would make changes to the debit interchange cap and codify an approach for regularly updating the cap on a going-forward basis.

Specifically, the NPRM proposes the following changes to the cap: decrease the base component to 14.4 cents (from 21 cents); decrease the ad valorem component to 4.0 basis points (from 5 basis points); and increase the fraud-prevention adjustment to 1.3 cents (from 1 cent).

Future updates to the cap would occur in odd numbered years, beginning in 2025, and the changes would occur automatically subject to proposed formulas using data contained in the biennial report of debit issuer costs for covered issuers (issuers with more than $10 billion in total assets). Comments on this proposed rule are due May 12, 2024. If adopted, the revisions would take effect on the first day of the next calendar quarter that begins at least 60 days after the final rule is published.

America's Credit Unions believes that the Board's proposal is seriously flawed. First and foremost, the new proposed interchange fee cap is based on data from 2021 that does not take into account the far-reaching changes to Regulation II requiring dual routing for card-not-present transactions that went into effect on July 1, 2023. This change has direct bearing on the data used to calculate the proposed interchange fee cap, including authorization, clearing, and settling costs.

Regulation II has caused significant real-world economic harm to credit unions and their members—and its recent expansion by the Board is compounding that harm. The Durbin Amendment's "exemption" of smaller financial institutions has proven to be largely illusory, as the Federal Reserve's own data shows that regulatory thresholds in the interchange market do not insulate smaller issuers from harm. Specifically, Regulation II data indicates that the average per transaction interchange fee for exempt single-message transactions has fallen by nearly 31 percent in inflation-adjusted dollars from 2011 to 2021.

In evaluating the effects of the proposed revisions, the Board claims that the proposal should lower merchants' costs of accepting debit card transactions and merchants, in turn, may pass on some portion of their savings from lower interchange fees to consumers. The data shows this did not happen in 2011 and would not happen today. The Richmond Federal Reserve Bank found that only about 1 percent of merchants passed their savings on to consumers through reduced prices, and in fact, over 20 percent increased their prices.

Simply put, the Board's action is motivated by a selective reading of narrow and incomplete data. Just as the merchants' past claims about consumer savings from promised "pass-throughs" and the effectiveness of "exemptions" have been thoroughly disproven by a bevy of research from leading academics and the Board's own research economists, any promises or representations the merchants make now should be viewed with robust skepticism.

We believe that the Board must halt this rulemaking so that a baseline of timely, accurate, and comprehensive data about the effect of existing regulations can be developed and analyzed before further action is taken on new rules related to debit card interchange. If the Board will not halt this effort, we urge Congress to act to require the Federal Reserve to stop and study any changes to Regulation II further.

On the subject of interchange, we must also reaffirm our strong opposition to efforts to expand the Durbin Amendment to credit cards, such as has been proposed in the Credit Card Competition Act, H.R. 3881. If enacted, this legislation will have a chilling effect on access to credit for a number of Americans with marginal credit scores. It is disturbing to see Senate proponents of this legislation attempt to weaponize and politicize agencies such as the CFPB by encouraging them to investigate industries that are opposed to this legislation. We encourage this Committee to continue to use its oversight role to prevent these regulatory agencies from becoming political pawns.

The Community Development Financial Institutions (CDFI) Fund Certification Process

Community Development Financial Institutions (CDFIs) —certified by the CDFI Fund within the U.S. Department of the Treasury—provide essential financial services to rural, underserved, and low-income communities. Access to certification, grants, and other programs at the CDFI Fund helps CDFI-certified credit unions (CDCUs) deliver programs and vital resources for communities and members facing financial challenges across the nation.

There are currently over 500 CDCUs serving 5.2 million members. Together, they represent over 35 percent of all certified CDFIs. According to the most recently published data, credit unions make 77.1 percent of CDFI loans and hold 76.7 percent of all CDFI financial products.

America's Credit Unions is grateful for the work done by the CDFI Fund to accept and incorporate feedback in its long-overdue update to the CDFI Certification Application. It is of critical importance that the CDFI Fund maintain an open and transparent dialogue with CDFI certification applicants, including sharing the CDFI Certification Agreement as soon as possible and providing reasonable notice and explanation when certification is denied due to non-compliance.

While the revised certification application and process heeds some industry concerns, there remains uncertainty about how the Fund will handle denials and decertification. We believe Congress can and should act to provide greater clarity in this area and ensure smooth operations of the Fund. America's Credit Unions supports the following bills that address the certification application process and strengthen credit unions' ability to participate in the CDFI Fund. The legislation would ensure the Fund is operating transparently and providing clear communication to certified institutions and other stakeholders.

- *CDFI Fund Transparency Act (H.R. 3161)*: This bipartisan, bicameral proposal would require the Treasury Secretary or their designee to testify annually before the Senate Banking Committee and House Financial Services Committee to provide a report on the CDFI Fund's operations. By requiring additional congressional oversight and accountability of the Fund, lawmakers and constituents can ensure it is effectively carrying out its intended mission to help low-income and underserved communities.

- *Rural Credit Access Act (H.R. 7338)*: This bipartisan proposal would require the Treasury Department to establish clear notification and recourse practices for CDFIs facing possible decertification, addressing a need not currently included in the revised certification application and process. The lack of notification and information can create significant confusion and problems for CDFIs facing decertification without suitable recourse and negatively affect the communities that depend on CDFI efforts.

Closing

In conclusion, credit unions, including Commonwealth Credit Union, do not boast the massive earnings of big banks, but our impact lies in our genuine commitment to serving communities. Every step we take is in line with our primary mission to better the lives of those we serve. As we adapt to the ever-changing economic landscape, our focus remains consistent – prioritize our members and their needs in order to help move communities forward. Commonwealth Credit Union, like other credit unions, is a testament to the resilience and dedication of community-orientated institutions.

We are not here to merely facilitate financial transactions. Our goal is to empower, educate and uplift our members, ensuring their financial wellbeing. The CFPB's regulatory overreach is impeding our ability to improve the financial wellbeing of our members, and I look forward to discussing that impact with you today.