



Testimony of

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On behalf of the

National Association of Federal Credit Unions

“Regulatory Relief for Community Banks and Credit Unions”

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Introduction

Good Morning, Chairman Shelby, Ranking Member Brown and Members of the Committee. My name is Ed Templeton and I am testifying today on behalf of the National Association of Federal Credit Unions (NAFCU). I serve as the President and CEO of SRP Federal Credit Union, headquartered in North Augusta, South Carolina. I have over 42 years of financial industry experience, including the last 27 years as President and CEO of SRP FCU. SRP FCU is a community credit union serving over 104,000 members in several counties in South Carolina along the Georgia border with nearly \$700 million in assets.

I currently serve as a Director-at-large and Chairman of NAFCU's Board of Directors. I have served in a number of roles with the Association while on the Board, including as Vice-Chairman and a member of the Legislative Committee. I received my BBA from Augusta College, graduated from the Georgia School of Banking and the BAI School of Bank Administration at the University of Wisconsin.

As you are aware, NAFCU is the only national organization exclusively representing the interests of the nation's federally-chartered credit unions. NAFCU-member credit unions collectively account for approximately 69 percent of the assets of all federally chartered credit unions. NAFCU and the entire credit union community appreciate the opportunity to participate in today's hearing regarding regulatory relief for credit unions.

Historically, credit unions have served a unique function in the delivery of essential financial services to American consumers. Established by an Act of Congress in 1934, the federal credit union system was created, and has been recognized, as a way to promote thrift and to make financial services available to all Americans, many of whom may otherwise have limited access to financial services. Congress established credit unions as an alternative to banks and to meet a precise public need – a niche that credit unions still fill today.

Every credit union, regardless of size, is a cooperative institution organized “for the purpose of promoting thrift among its members and creating a source of credit for provident or productive

purposes.” (12 USC 1752(1)). While over 80 years have passed since the Federal Credit Union Act (FCUA) was signed into law, two fundamental principles regarding the operation of credit unions remain every bit as important today as in 1934:

- credit unions remain wholly committed to providing their members with efficient, low-cost, personal financial service; and,
- credit unions continue to emphasize traditional cooperative values such as democracy and volunteerism.

These principles apply for all credit unions, regardless of their size. When compared with the nation’s “Too Big To Fail” financial institutions, all credit unions are “small” institutions. It is with this fact in mind that NAFUCU believes that there should not be artificial or arbitrary asset thresholds established for which size credit unions should receive regulatory relief. The challenges facing the industry impact, or stand to impact, all credit unions and all ultimately need relief.

Today’s hearing is an important one and the entire credit union community appreciates the opportunity to expand on the topic of regulatory relief. In my testimony I will cover several main points, including:

- **Increased regulatory burden and how it is impacting credit unions;**
- **The importance of legitimate cost-benefit analysis at the regulatory agencies from the onset;**
- **Understanding risk in the financial system and the potential of regulating credit unions out of existence with one-size fits all regulatory solutions;**
- **How Congress can provide regulatory relief; and**
- **How the regulatory agencies can provide regulatory relief.**

I. Increased Regulatory Burden has Impacted Credit Unions

Credit unions have a long track record of helping the economy grow and making loans when other lenders have left various markets. This was evidenced during the recent financial crisis when credit unions kept making auto loans, home loans, and small business loans when other lenders cut back. Still, credit unions have always been some of the most highly regulated of all financial institutions, facing restrictions on who they can serve and their ability to raise capital.

Credit union lending continues to grow at a solid pace today, up about 18% as of June 2014, as compared to 2009. Although credit unions continue to focus on their members, the increasing complexity of the regulatory environment is taking a toll on the credit union industry. While NAFCU and its member credit unions take safety and soundness extremely seriously, the regulatory pendulum post-crisis has swung too far towards an environment of overregulation that threatens to stifle economic growth. As the National Credit Union Administration (NCUA) and the Consumer Financial Protection Bureau (CFPB) work to prevent the next financial crisis, even the most well intended regulations have the potential to regulate our industry out of business.

During the consideration of financial reform, NAFCU was concerned about the possibility of overregulation of good actors such as credit unions, and this is why NAFCU was the only credit union trade association to oppose the CFPB having rulemaking authority over credit unions. Unfortunately, many of our concerns about the increased regulatory burdens that credit unions would face under the CFPB have proven true. While there may be credible arguments to be made for the existence of a CFPB, its primary focus should be on regulating the unregulated bad actors, not adding new regulatory burdens to good actors like credit unions that already fall under a prudential regulator. As expected, the breadth and pace of CFPB rulemaking is troublesome, and the unprecedented new compliance burden placed on credit unions has been immense. While it is true that credit unions under \$10 billion are exempt from the examination and enforcement from the CFPB, all credit unions are subject to the rulemakings of the agency and they are feeling this burden. While the CFPB has the authority to exempt certain institutions, such as credit unions, from agency rules, they have been lax to use this authority to provide relief.

The impact of this growing compliance burden is evident as the number of credit unions continues to decline, dropping by 22% (more than 1,700) institutions since 2007. A main reason for the decline is the increasing cost and complexity of complying with the ever-increasing onslaught of regulations. Since the 2nd quarter of 2010, we have lost 1,100 federally-insured credit unions, 96% of which were smaller institutions below \$100 million in assets. Many smaller institutions simply cannot keep up with the new regulatory tide and have had to merge out of business or be taken over. Credit unions need regulatory relief, both from Congress and their regulators.

This growing demand on credit unions is demonstrated by a 2011 NAFCU survey of our membership that found that nearly 97% of respondents were spending more time on regulatory compliance issues than they did in 2009. A 2012 NAFCU survey of our membership found that 94% of respondents had seen their compliance burdens increase since the passage of the *Dodd-Frank Act* in 2010. At SRP FCU our compliance costs have more than doubled since 2009 and we are adding another compliance officer in 2015 just to keep up. Many credit unions find themselves in the same situation, as a March, 2013, survey of NAFCU members found that nearly 27% had increased their full-time equivalents (FTEs) for compliance personnel in 2013, as compared to 2012. That same survey found that over 70% of respondents have had non-compliance staff members take on compliance-related duties due to the increasing regulatory burden. This highlights the fact that many non-compliance staff are being forced to take time away from serving members to spend time on compliance issues.

At SRP FCU we have felt the pain of these burdens as well. There are costs incurred each time a rule is changed and most costs of compliance do not vary by size, therefore it is a greater burden on credit unions like mine. We are required to update our forms and disclosures, reprogram our data processing systems and retrain our staff each time there is a change, just as large institutions are. Unfortunately, lending regulation revisions never seem to occur all at once. If all of the changes were coordinated and were implemented at one time, these costs would have been significantly reduced and a considerable amount of our resources that were utilized to comply could have been used to benefit our members instead.

If Congress and the regulators will not act to provide regulatory relief to credit unions, the industry may look vastly different a decade from now.

II. Credit Unions Need Regulatory Relief

Regulatory burden is the top challenge facing all credit unions. While smaller credit unions continue to disappear from the growing burden, all credit unions are finding the current environment challenging. Finding ways to cut-down on burdensome and unnecessary regulatory compliance costs is the only way for credit unions to thrive and continue to provide their member-owners with basic financial services and the exemplary service they need and deserve. It is also a top goal of NAFCU.

Ongoing discussions with NAFCU member credit unions led to the unveiling of NAFCU's initial "Five Point Plan for Regulatory Relief" in February, 2013, and a call for Congress to enact meaningful legislative reforms that would provide much needed assistance to our nation's credit unions. The need for regulatory relief is even stronger in 2015, which is why we are releasing an updated version of the plan for the 114th Congress.

The 2015 plan calls for relief in five key areas: (1) Capital Reforms for Credit Unions, (2) Field of Membership Improvements for Credit Unions, (3) Reducing CFPB Burdens on Credit Unions, (4) Operational Improvements for Credit Unions, and (5) 21st Century Data Security Standards.

Recognizing that there are a number of outdated regulations and requirements that no longer make sense and need to be modernized or eliminated, NAFCU also compiled and released a document entitled "NAFCU'S Dirty Dozen" list of regulations to remove or amend in December of 2013 that outlined twelve key regulatory issues credit unions face that should be eliminated or amended. While some slight progress was made on several of these recommendations, we have updated that list for 2015 to outline the "Top Ten" regulations that regulators can and should act on now to provide relief. This list includes:

1. Improving the process for credit unions seeking changes to their field of membership;
2. Providing More Meaningful Exemptions for Small Institutions;
3. Expanding credit union investment authority;
4. Increasing the number of Reg D transfers allowed;
5. Additional regulatory flexibility for credit unions that offer member business loans;
6. Updating the requirement to disclose account numbers to protect the privacy of members;
7. Updating advertising requirements for loan products and share accounts;
8. Improvements to the Central Liquidity Facility (CLF);
9. Granting of waivers by NCUA to a federal credit union to follow a state law; and
10. Updating, simplifying and making improvements to regulations governing check processing and fund availability.

In my statement today, we will highlight a number of key issues where these regulatory burdens and proposals are posing immediate threats to the ability of credit unions to serve their members and give them the financial products that they want and need. Perhaps one of the greatest challenges credit unions face is the often times grossly distorted time and cost estimates provided to them by the regulatory agencies in the proposal stages of rulemaking. As will be further discussed in my testimony below, regardless of whether or not the estimates are put forward in good faith, there continues to be a major disconnect between the regulatory agencies in Washington, D.C., and credit unions across the country in terms of how time consuming, costly, and problematic it can be to implement various proposals. Additionally, there isn't always a great amount of thought given to the actual operational aspects of many proposals including how they will interact with existing regulations and how they would address risk in the system without layering needless regulation upon needless regulation.

III. Recent Actions to Provide Relief

NAFCU and the entire credit union community would like to thank the members of this committee and your staffs for all of your work on the passage of H.R. 3468, the *Credit Union Share Insurance Fund Parity Act* in the 113th Congress. As you are aware, this legislation allows NCUA to provide

pass-through share insurance coverage on Interest on Lawyers Trust Accounts (IOLTAs) and other similar accounts, similar to what the Federal Deposit Insurance Corporation (FDIC) provides. We also appreciate the passage of the *American Savings Promotion Act*.

NAFCU also recognizes that there has been effort by regulators, such as NCUA and CFPB to provide relief via the regulatory process. While there have been some small steps taken, too often regulators set arbitrary asset thresholds for relief and don't actually consider the risk or complexities of institutions. Regulation of the system should match the risk to the system. As previously noted, when compared with the nation's "Too Big To Fail" financial institutions, all credit unions are "small" institutions and not very complex. There should not be artificial or arbitrary asset thresholds established for which size credit unions should receive regulatory relief. The challenges facing the industry impact, or stand to impact, all credit unions and all ultimately need relief.

More needs to be done. In particular, NAFCU is also concerned that regulators sometimes try to frame new costly and burdensome proposals as "regulatory relief" when the end result for credit unions is higher costs for little relief. One example is NCUA's request for additional third party vendor examination authority for credit unions which they have called "regulatory relief."

NAFCU does not support spending credit union resources to expand NCUA's examination authority into non-credit union third parties. While NCUA contends that examination and enforcement authority over third party vendors will provide regulatory relief for the industry, NAFCU and our members firmly believe that such authority is unnecessary and will require considerable expenditure of the agency's resources and time. NAFCU disagrees with the assertion that third party vendor examination and enforcement authority will provide any significant improvement to credit union safety and soundness. The key to success with appropriate management of vendors is due diligence on behalf of the credit union. NAFCU supports credit unions being able to do this due diligence and NCUA already offers due diligence guidance to credit unions. Giving NCUA additional authority will require an additional outlay of agency resources, which will in turn necessitate higher costs to credit unions.

Another prime example of a proposal NCUA has called relief, but is in fact a new heavy burden on the industry, is the agency's current proposal for a risk-based capital system for credit unions.

IV. NCUA's 2nd Risk-Based Capital Proposal: Still a Solution in Search of a Problem

On January 15, 2015, the National Credit Union Administration (NCUA) Board, in a 2-1 vote, issued a revised risk-based capital proposed rule for credit unions. NAFCU has just begun to analyze the proposal and will be providing NCUA with detailed comments and concerns from our membership as part of the agency's request for comment before the April 27, 2015, deadline. We are encouraged to see that the revised version of this proposal addresses some changes sought by our membership. However, NAFCU maintains that this costly proposal is unnecessary and will ultimately unduly burden credit unions and the communities they serve.

A Costly Experiment for Credit Unions

NAFCU and its member credit unions remain deeply concerned about the cost of this proposal. NAFCU's analysis estimates that credit unions' capital cushions (a practice encouraged by NCUA's own examiners) will suffer over a \$470 million hit if NCUA promulgates separate risk-based capital threshold for well capitalized and adequately capitalized credit unions (a "two-tier" approach). Specifically, in order to satisfy the proposal's "well-capitalized" thresholds, today's credit unions would need to hold at least an additional \$729 million. On the other hand, to satisfy the proposal's "adequately capitalized" thresholds, today's credit unions would need to hold at least an additional \$260 million. Despite NCUA's assertion that only a limited number of credit unions will be impacted, this proposal would force credit unions to hold hundreds of millions of dollars in additional reserves to achieve the same capital cushion levels that they currently maintain. These are funds that could otherwise be used to make loans to consumers or small businesses and aid in our nation's economic recovery.

In addition, NCUA's own direct cost estimate approximates that it will cost \$3.75 million for the agency to adjust the Call Report, update its examination systems and train internal staff to implement the proposed requirements. NCUA also estimates credit unions would incur an ongoing

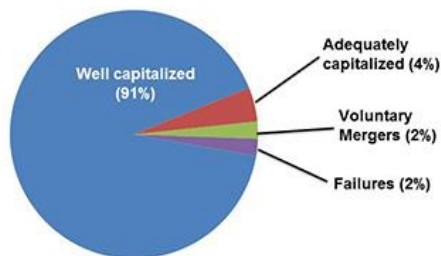
\$1.1 million expense to complete the adjusted Call Report fields. NCUA’s conservative estimate states that it will only take a meager 40 hours to completely review the 450-page proposal against a credit union’s current policies at a cost of over \$5.1 million. We expect that the true costs will be much higher when credit unions have to comply.

Impact Analysis

NCUA estimates that 19 credit unions would be downgraded if the new risk-based proposal were in place today. NAFCU believes the real impact is best illustrated with a look at its implications during a financial downturn. Under the new proposal, the number of credit unions downgraded more than doubles during a downturn in the business cycle. Because the nature of the proposal is such that, in many cases, assets that would receive varying risk weights under the proposal are grouped into the same category on NCUA call reports, numerous assumptions must be made to estimate impact.

Under our most recent analysis, NAFCU believes 45 credit unions would have been downgraded during the financial crisis under this proposal. Of those 45, 41 of credit unions would be well-capitalized today. To have avoided downgrade, the institutions would have had to increase capital by \$145 million, or an average \$3.2 million per institution. As the chart on the next page demonstrates, almost all of the credit unions that would have been downgraded—95%—are well capitalized or adequately capitalized today without NCUA’s risk-based capital proposal being needed.

Current status of the credit unions that would have been downgraded in 2009 under RBC2



Source: NCUA call report data

Legal Authority

NAFCU strongly believes that NCUA lacks the statutory authority to prescribe a separate risk-based capital threshold for well capitalized and adequately capitalized credit unions. NCUA Board Member J. Mark McWatters, the dissenting vote on the proposal, called NCUA’s lack of legal authority the most “fundamental issue presented before the Board.” The Federal Credit Union (FCU) Act expressly provides that NCUA shall implement a risk-based net worth requirement that “take[s] account of any material risk against which the net worth ratio required for an insured credit union to be *adequately capitalized* may not provide adequate protection.” 12 U.S.C. § 1790d(d). The FCU Act does not provide NCUA the express authority to implement a separate risk-based net worth threshold for the “well capitalized” net worth category. Simply put, Congress has not expressly authorized the Board to adopt a two-tier risk-based net worth standard.

Further, it has been disclosed that NCUA authorized the expenditure of \$150,000 to seek an outside legal opinion over the legality of the risk-based proposal. It is worth noting that NCUA continued forward with this proposal despite the neutrality of the outside opinion which recognized the questionable legal standing of the proposal by noting only that a court “could” conclude that NCUA had the statutory authority to offer a two-tier system.

Legislative Change

Ultimately, NAFCU believes legislative changes are necessary to bring about comprehensive capital reform for credit unions such as allowing credit unions to have access to supplemental capital sources, and making the statutory changes necessary to design a true risk-based capital system for credit unions that gives greater statutory flexibility in determining corresponding leverage ratio standards.

V. Credit Unions Need Field of Membership Help

In addition to the legislative changes needed on the capital front for credit unions, field of membership (FOM) rules for credit unions need to be modernized, both on the legislative front and by NCUA.

NAFCU believes reasonable improvements to current field-of-membership restrictions include: (1) streamlining the process for converting from one charter type to another; (2) updating and revising population limits in NCUA's field of membership rules; and, (3) making statutory changes to make it easier for all credit unions to add "underserved" areas within their field of membership or continuing serving their current select employee groups (SEGs) when they change charters. Additionally, NAFCU believes that NCUA should have a "reverse wild card" authority where federal credit unions can request a waiver from the agency that allows them to follow a state rule for credit unions if it allows them to serve their members better.

Charter Conversions

NAFCU continues to hear from our members that NCUA's Rules and Regulations governing charter conversions for credit unions that seek to convert from one type of federal charter to another are unnecessarily cumbersome. We ask that NCUA review its rules on conversions and initiate a rulemaking for changes, with particular focus on conversions to a community charter.

NAFCU and our members strongly oppose the agency's chartering rule that prevents a single- or multi-associational chartered federal credit union (FCU) from continuing to serve its existing field of membership when it converts to a community charter, unless the field of membership is entirely within the new community. The effect of this limitation has been that FCUs are dissuaded from offering their services to more people, a result that we do not believe is desirable.

Definition of "Rural District"

Under NCUA's Rules and Regulations, a "rural district" is defined as (1) a district that has well-defined, contiguous geographic boundaries; (2) more than 50% of the district's population resides in census blocks or other geographic areas that are designated as rural by the United States Census Bureau; and (3) does not exceed certain other population thresholds. The district's population

cannot exceed either (a) the greater of 250,000 or 3 percent of the population of the state in which the majority of the district is located, or (b) if the district has well-defined contiguous geographic boundaries, it does not have a population density in excess of 100 people per square mile, and the total population of the district does not exceed the greater of 250,000 or 3 percent of the population of the state in which the majority of the district is located.

The current definition of “rural district” was revised in February, 2013. As NAFCU has expressed many times to NCUA, it is important that the definition not be overly restrictive and consequently deprive many Americans the opportunity to receive high quality financial services from a credit union.

While NAFCU welcomed NCUA’s efforts to enable more credit unions to obtain a community charter under the “rural district” designation, we continue to hear from our members that the final rule has had only a limited effect. We urge the agency to reconsider the definition of “rural district” so as to provide greater flexibility for credit unions that would like to serve rural areas of our nation. A more flexible definition of “rural district” would increase credit availability to those who might otherwise not have ready access to financial services.

NAFCU notes that under the “three percent option” only those credit unions that seek to serve in rural areas in the thirteen most populated states in the country have been affected by the final rule. Those credit unions that would like to serve persons who live in rural areas in the remaining thirty-seven states and U.S. Territories remain subject to an arbitrary 250,000 population limit.

NAFCU is also concerned with the final rule’s 250,000 population limit. In prior communications with the agency, we urged NCUA to, at the very least increase this limit to the pre-2010 level of 500,000, which was reduced without explanation. With the 2010 changes, the agency effectively decided that a “rural district” is actually 60% smaller in population than it previously thought. This fact, in and of itself, is troubling. NAFCU believes the 250,000 limit is arbitrary and does not pass even a cursory review of our nation’s makeup. We urge the agency to reconsider this threshold.

Further, NAFCU believes NCUA should either remove or greatly increase the 100 person per square mile limit, as this population density threshold is far too low. NAFCU does not believe a person-per-square mile limitation should be part of the analysis for determining whether a credit union should be granted a community charter with “rural district” designation.

Statutory Changes are Needed

Congress can provide FOM relief by removing outdated restrictions that credit unions face such as expanding the criteria for defining “urban” and “rural” and allowing voluntary mergers involving multiple common bond credit unions and allowing credit unions that convert to community charters to retain their current select employee groups (SEGs).

Furthermore, Congress should clarify that all credit unions, regardless of charter type, should be allowed to add underserved areas to their field of membership. This is an important issue for SRP FCU, as our membership includes Allendale and Barnwell counties which are some of the most rural in South Carolina. They are also some of the poorest, with large percentages living below the poverty level. SRP FCU has a strong presence in these counties, with a significant amount of the adult populations in those counties being members. We would like to take our success in these counties and help other underserved communities. However, as a community charter, we cannot add underserved areas to our field of membership.

VI. Regulators Must Be Held Accountable for Cost and Compliance Burden Estimates

Cost and time burden estimates issued by regulators such as NCUA and CFPB are often grossly understated. Unfortunately, there often is never any effort to go back and review these estimates for accuracy once a proposal is final. We believe Congress should require periodic reviews of “actual” regulatory burdens of finalized rules and ensure agencies remove or amend those rules that vastly underestimated the compliance burden. A March, 2013, survey of NAFCU’s membership found that over 55% of credit unions believe compliance cost estimates from NCUA and the CFPB are lower than they are when the credit union actual has to implement the proposal.

We believe Congress should use their oversight authority to require regulators to provide specific details on how they determined their assumptions in their cost estimates when submitting those estimates to OMB and publishing them in proposed rules. It is important that regulators be held to a standard that recognizes burden at a financial institution goes well beyond additional recordkeeping. At SRP FCU, we spend approximately 116 employee hours to fill out one NCUA Call Report. NCUA's 2014 submission to OMB estimates the time to complete the Call Report to be 6.6 hours per reporting cycle. Something is amiss. That's 109 hours of regulatory burden that are not being recognized on just one form. With the requirements of the new proposed risk-based capital proposal, this burden is likely to get worse. More needs to be done to force regulators to justify that the benefits of a proposal outweigh its costs.

VII. Revisiting Legislation from the 113th Congress to Provide Relief

There were a number of measures introduced in either the House or Senate in the 113th Congress to provide credit unions with regulatory relief. Unfortunately, many of these measures stalled at various points in the legislative process. Still, we hope that these measures gain traction in the 114th Congress:

Regulatory Relief for Credit Unions Act of 2013

The *Regulatory Relief for Credit Unions Act of 2013* (H.R. 2572) reflected several provisions important to NAFCU. The legislation would:

- establish a risk-based capital system for credit unions;
- allow NCUA to grant federal credit unions a waiver to follow a state rule instead of a federal one in certain situations;
- authorize NCUA to step in where appropriate to modify a CFPB rule affecting credit unions;
- require that NCUA and CFPB revisit cost/benefit analyses of rules after three years so they have a true sense of the compliance costs for credit unions;
- require NCUA to conduct a study of the Central Liquidity Facility and make legislative recommendations for its modernization;

- give credit unions better control over their investment decisions and portfolio risk.

Member Business Lending Improvements

Senators Mark Udall and Rand Paul introduced S. 968, the *Small Business Lending Enhancement Act of 2013*, and Representatives Royce and McCarthy introduced H.R. 688, the *Credit Union Small Business Jobs Creation Act*. Both bills would raise the arbitrary cap on credit union member business loans from 12.25% to 27.5% of total assets for credit unions meeting strict eligibility requirements

Additionally, NAFCU supported legislation (H.R. 4226) to exclude loans made to non-owner occupied 1- to- 4 family dwelling from the definition of a member business loan and legislation (H.R. 5061) to exempt loans made to our nation’s veterans from the definition of a member business loan.

Furthermore, NAFCU also supports exempting from the member business lending cap loans made to non-profit religious organizations, businesses with fewer than 20 employees, and businesses in “underserved areas.”

Supplemental Capital for Credit Unions

Allowing eligible credit unions access to supplemental capital, in addition to retained earning sources, will help ensure healthy credit unions can achieve manageable asset growth and continue to serve their member-owners efficiently as the country recovers from the financial crisis.

During the last Congress Representatives King and Sherman introduced H.R. 719, the *Capital Access for Small Businesses and Jobs Act*, a bill that would authorize NCUA to allow federal credit unions to receive payments on uninsured, non-share capital accounts, provided the accounts do not alter the cooperative nature of the credit union. The need for supplemental capital is even greater today as the NCUA pushes ahead with their stringent risk-based capital proposal.

Reforms to the definition of “Points and Fees”

Senators Manchin, Johanns, Toomey, Kirk, Stabenow and Levin introduced S.1577, *The Mortgage Choice Act*, a bipartisan bill that would exclude affiliated title charges from the “points and fees” definition, and clarify that escrow charges should be excluded from any calculation of “points and fees.” These important changes would greatly improve the definition of “points and fees” used to determine whether a loan meets the QM test, and would ensure that those with low and moderate means would continue to be able to obtain their mortgages from their credit union at a reasonable price. We appreciate the leadership of the sponsors of this legislation and urge the Senate to advance this issue as soon as possible. Similar legislation (H.R. 685) was just reintroduced in the House last week.

Privacy Notices

Earlier this week Senators Moran and Heitkamp reintroduced bipartisan legislation (S. 423) that would remove the requirement that financial institutions send redundant paper annual privacy notices if they do not share information and their policies have not changed, provided that they remain accessible elsewhere. These duplicative notices are costly for the financial institution and often confusing for the consumer as well. In the 113th Congress, this legislation had over 70 cosponsors in the Senate. We appreciate the continued leadership on this important issue. Similar legislation has been introduced in the House this Congress as H.R. 601.

Examination Fairness

Credit unions face more examiner scrutiny than ever, as the examination cycles for credit unions have gone from 18 months to 12 months since the onset of the financial crisis even though credit union financial conditions continue to improve. Additional exams mean additional staff time and resources to prepare and respond to examiner needs. NAFCU has concerns about the continued use of Documents of Resolution (DOR) when they are not necessary or are used in place of open and honest conversations about examiner concerns. A survey of NAFCU members last year found that nearly 40% of credit unions that received DORs during their last exam felt it was unjustified and nearly 15% of credit unions said their examiners appeared less competent than in the past. NAFCU supports effective exams that are focused on safety and soundness and flow out of clear regulatory directives and later in my testimony we will outline areas where we think NCUA can do more.

NAFCU strongly supported legislation introduced (S. 727) by Senators Manchin and Moran last Congress that would have helped to ensure timeliness, clear guidance and an independent appeal process free of examiner retaliation. Identical legislation (H.R. 1553) was introduced in the House and NAFCU is hopeful that both chambers take this issue up during the 114th Congress.

Relief from the Consumer Financial Protection Bureau

NAFCU has consistently supported measures in both chambers to bring greater accountability and transparency to the Consumer Financial Protection Bureau (CFPB) including replacing the director with a board akin to other federal financial regulators, bringing the CFPB under the Congressional appropriations process, and giving the Financial Stability Oversight Council additional tools to challenge CFPB rulemaking. NAFCU appreciates the leadership of Senators Fischer, Scott, Barrasso, Chambliss, Collins, Inhofe, Johnson and Roberts for spearheading these efforts.

Additionally, we appreciate the work of Senators Toomey and Donnelly for introducing S. 2732, the *CFPB Examination and Reporting Threshold Act*, to address the arbitrary \$10 billion threshold for examination of depository institutions by the CFPB. NAFCU believes that all credit unions, as good actors during the financial crisis, should be exempt from being subject to the CFPB and would support adding language to the legislation exempting all credit unions in place of the proposed \$50 billion threshold.

Relief from Operation Choke Point

The Operation Choke Point initiative was launched in an effort to fight consumer fraud by denying fraudulent businesses access to banking services and holding financial institutions and third-party processors accountable if they continue to serve a client operating in a fraudulent manner. NAFCU, with many others in the financial services industry, has noted concerns that this program “could seriously deter the natural growth and development of e-commerce and stifle future economic growth.”

In the House, Representative Leutkemeyer introduced H.R. 4986, the *End Operation Choke Point Act*, a bill that would create a legal safe harbor for financial institutions, including credit unions

that meet qualifying criteria. Luetkemeyer also introduced H.R. 5758, the *Financial Institution Customer Protection Act*, a bill that would rein in the Justice Department’s “Operation Choke Point” initiative by restricting its ability to order the termination of accounts in financial institutions by requiring federal banking regulators, to provide material reason beyond reputational risk for ordering a financial institutions to terminate a banking relationship. It would also require regulators to put any order to terminate a customer’s account into writing. The latter bill was reintroduced last week in substantially similar form and under the same title as H.R. 766.

Helping Expand Lending Practices in Rural Communities Act

Introduced by Leader McConnell (S.1916), this bill would be helpful to small creditors, including credit unions, as they deal with the CFPB’s definition “rural area” particularly as it relates to the ability-to-repay rule. Representative Andy Barr (H.R. 2672) had a similar bill in the House and NAFCU hopes these bicameral efforts continue this Congress. As I outline in my testimony below, NAFCU also has concerns with how NCUA defines “rural.”

Community Bank Mortgage Servicing Asset Capital Requirements Study Act

Introduced by Representatives Luetkemeyer and Perlmutter as H.R. 4042 in the last Congress, this bill would delay the implementation of Basel III regulations on mortgage servicing assets until an impact study is conducted and alternatives are explored. Given the circumstances credit unions find themselves in with the risk-based capital proposal, NAFCU believes this is an appropriate vehicle to include a similar analysis be done by the NCUA pertaining to their risk-based capital proposal.

SAFE Act Confidentiality and Privilege Enhancement Act

Introduced by Chairman Capito as H.R. 4626 in the House last Congress, the bill would clarify the confidentiality of information shared between state and federal financial service regulators under the *S.A.F.E. Mortgage Licensing Act*. This commonsense technical fix is welcomed by credit unions as it applies to the Nationwide Mortgage Licensing System & Registry established as an oversight mechanism to collect information from Mortgage Loan Originators. Senator Capito just reintroduced this last week and we applaud her efforts.

VIII. Areas Where Regulators Can Provide Relief to Credit Unions

While my testimony has outlined important issues impacting credit unions and highlighted steps that Congress can take to help, there are additional steps that the NCUA, CFPB, FHFA, the Federal Reserve and others can currently take to provide relief without Congressional action and we would encourage them to do so.

NCUA

We are pleased that the National Credit Union Administration has been willing to take some small steps recently to provide credit unions relief. A prime example of this is the agency's proposed fixed-asset rule. This is a topic that was previously on NAFCU's "Dirty Dozen" and we are hopeful that the agency will continue moving forward and finalize this proposal.

We are also glad to see NCUA's voluntary participation in review of its regulations pursuant to the *Economic Growth and Regulatory Paperwork Reduction Act of 1996* (EGRPRA). This review provides an important opportunity for credit unions to voice their concerns about outdated, unnecessary or unduly burdensome requirements of NCUA's Rules and Regulations.

While these small steps by NCUA are positive, NAFCU believes that a big part of the problem is the cumulative impact of numerous regulations. While NCUA is not required to follow the President's Executive Order 13563 -- Improving Regulation and Regulatory Review, we believe that the agency should adhere to the spirit of it during the rulemaking process, such as taking into account the costs of cumulative costs of its regulations on the credit union industry. As noted earlier, NAFCU believes all credit unions need relief and regulators such as NCUA should not solely rely on an arbitrary asset size threshold when providing relief.

While my testimony has already outlined key areas such as field of membership, risk-based capital and compliance burden estimates, there are a number of areas where we would like to see NCUA action to provide relief.

Member Business Lending

A major area where we think NCUA can use its authority to provide relief is with member business lending. The Member Business Lending (MBL) regulation, as NAFCU and our members have consistently maintained, is far too restrictive and cumbersome.

As NAFCU outlined in both its March 5, 2014, letter to NCUA Board and our “Top Ten” list of regulations to eliminate or amend, there are several aspects of the MBL requirements which should be improved, including: changes to the waiver requirements and waiver process to make it more efficient and easier to obtain individual and blanket waivers; expanding opportunities to obtain waivers; and removing the five year relationship requirement to obtain a personal guarantee waiver. Additionally, NCUA should use its authority granted in the FCU Act to provide an exception to the limitations on member business loans (the MBL cap) for those credit unions that have a history of making MBLs to their members for a period of time.

Section 1757a of the FCU Act contains the limitations on MBLs. Under Part 723 of NCUA’s Rules and Regulations, the aggregate MBL limit for a credit union is limited to the lesser of 1.75 times the credit union’s net worth or 12.25% of the credit union’s total assets. However, the FCU Act also contains exceptions to the MBL cap. In particular, it provides exception authority from the MBL cap for “an insured credit union chartered for the purpose of making, or that has a history of primarily making, member business loans to its members, as determined by the Board.” *See*, 12 U.S.C. § 1757a(b)(1).

Traditionally, this provision in § 1757a has been construed narrowly by NCUA. Section 723.17(c) of NCUA’s Rules and Regulations currently defines credit unions that have a history of primarily making member business loans as credit unions that have either 25 percent of their outstanding loans in member business loans or member business loans comprise the largest portion of their loan portfolios, as evidenced by any Call Report or other document filed between 1995 and 1998. NAFCU continues to hear from our members that this definition is overly restrictive and often prevents them from extending sound loans to their small business members, many of whom have been abandoned by other financial institutions due to their smaller size.

NAFCU has urged NCUA to take a broader interpretation of the history of primarily making MBLs provision of the FCU Act. This can be done by NCUA utilizing its statutory authority to create an exception from the MBL cap for all credit unions that have a history of making MBLs for an extended period of time. NAFCU and our members believe that a credit union that has had a successful MBL program in place for a period of five years or greater would be a reasonable basis to satisfy this statutory authority.

NCUA has explained that the current definition “focuses on a credit union’s historical behavior during the years leading up to the enactment of the *Credit Union Membership Access Act* (CUMAA).” NAFCU and our members believe this focus is unnecessarily restrictive, and we have urged the agency to expand the scope of the definition. NAFCU contends that it would be more appropriate for NCUA to consider a credit union’s history of making MBLs in general, rather than restricting its focus solely to a credit union’s behavior from 1995 through 1998. In particular, we believe the agency should define credit unions that have had a successful MBL program in place for at least five years as having a “history of primarily making MBLs.” NAFCU has encouraged the NCUA Board to set this standard and make the exception available to all credit unions.

NCUA expanding the opportunities for credit unions to obtain waivers is another area where they could help. In February 2013, NCUA issued supervisory letter 13-01 to credit unions attempting to shed light on the criteria and processes for obtaining MBL waivers. While this guidance was useful to credit unions, NAFCU continues to hear from its members that the waiver process is complicated, slow moving, and inefficient. As a result, many credit unions have been unable to extend sound loans to their small business members, loans which may have been lost to competitors, or worse, never extended at all.

While waivers should not be used so frequently that they are the norm, the process to obtain one should not be so excessively difficult as to prevent credit unions from serving their membership effectively. Healthy, well-run credit unions with risk focused MBL programs that maintain appropriate policies and procedures and that perform adequate due diligence on their member

borrowers should be able to apply for and obtain blanket waivers which would help their membership.

Furthermore, the MBL regulations should be amended to expand a credit union's ability to obtain an individual or blanket waiver. Credit unions, because of their fundamental nature, are in a great position to extend credit to small businesses which will help fuel our nation's economic recovery. Expansion of the waiver capabilities would enable well run credit unions to extend loans to their small business members.

As noted above, the FCU Act contains the limitations on and exceptions to MBLs. However, the FCU Act does not prescribe limitations on the waivers that NCUA can put in place with regard to the regulations it imposes for MBLs that are not statutory requirements.

Section 723.10 of NCUA's Rules and Regulations contains an enumerated list of MBL related requirements for which a credit union can apply for a waiver. NAFCU believes that this enumerated list of available waivers should be replaced with a more flexible waiver provision that would allow a credit union to apply for, and obtain, a waiver from a non-statutorily required MBL regulatory requirement. The use of an enumerated list necessarily restricts a credit union from obtaining a waiver of a requirement which is not listed, even where such a waiver would not pose a safety and soundness concern to the credit union. NAFCU encourages NCUA to amend Section 723.10 to provide a more flexible waiver provision.

NCUA could issue appropriate guidance for the types of waivers that a credit union could obtain using a more flexible standard, which could include enumerated lists and appropriate examples. Section 723.11 of NCUA's Rules and Regulations contains the procedural requirements for a credit union to obtain a waiver, and it requires a credit union to submit a waiver request accompanied by a great deal of information related to the credit union's member business loan program. Under a more flexible provision, and taking into account safety and soundness considerations, NCUA should be able to determine from the information required to be provided pursuant to Section 723.11 whether a waiver is appropriate for a credit union. This approach would

enhance a credit union's ability to provide MBLs to its members without compromising the safety and soundness of the credit union.

Budget Transparency

NCUA is funded by the credit unions it supervises. Each year, credit unions are assessed a different operating fee based on asset size. NCUA then pools the monies it receives from credit unions and uses those funds to create and manage an examination program. The monies that NCUA collects, however, have significantly increased over the past six years to cover a \$109.7 million increase in the agency's budget during that period.

NAFCU supports the agency's efforts to accurately calculate the appropriate overhead transfer rate and urges NCUA to maintain a rate that is equitable to FCUs given they are funding the remaining agency expenses through operating fees. NAFCU encourages NCUA to continue to look for ways to decrease costs in order to reduce fees FCUs pay to the agency. In connection with this, NAFCU believes that credit unions deserve clearer disclosures of how the fees they pay the agency are managed.

As NAFCU has stated in previous communications to the agency, NCUA is charged by Congress to oversee and manage the National Credit Union Share Insurance Fund (NCUSIF), the Temporary Corporate Credit Union Stabilization Fund, the Central Liquidity Fund, and its annual operating budget. These funds are comprised of monies paid by credit unions. NCUA is charged with protecting these funds and using its operating budget to advance the safety and soundness of credit unions.

Because these funds are fully supported by credit union assets, NAFCU and our members strongly believe that credit unions are entitled to know how each fund is being managed. Currently, NCUA publicly releases general financial statements and aggregated balance sheets for each fund. However, the agency does not provide non-aggregated breakdowns of the components that go into the expenditures from the funds, such as the overhead transfer rate. Although NCUA releases a plethora of public information on the general financial condition of the funds, NAFCU urges the agency to fully disclose the amounts disbursed and allocated for each fund. For example, NAFCU

and our members believe that NCUA should be transparent about how the monies transferred from the NCUSIF through the overhead transfer rate are allocated to the NCUA Operating Budget.

NCUA Board Member McWatters has urged greater transparency in NCUA's budget process, including an industry hearing on the budget. He has also outlined a series of recommendations for the agency to take to provide great budget transparency:

1. Additional detail regarding each of the following expenditures: Employee Pay and Benefits, Travel, Rent/Communications/Utilities, Administrative, and Contracted Services;
2. A detailed analysis of how NCUA may reduce the expenditures noted in item 1 above;
3. The submission of the methodology employed by NCUA in calculating the OTR for public comment, and a detailed description of the methodology adopted by NCUA following a thoughtful analysis of the comments received;
4. A detailed analysis of expenditures among NCUA, the National Credit Union Share Insurance Fund, the Temporary Corporate Credit Union Stabilization Fund, and the Central Liquidity Facility;
5. A detailed analysis of why NCUA's budget has increased by over 50-percent in the past five years, as well as a year-by-year analysis of all such increases;
6. A detailed analysis of all cost savings programs implemented by NCUA over the past five years;
7. A detailed analysis of all expenditures incurred by NCUA to support the Financial Stability Oversight Council (FSOC);
8. A detailed analysis of all expenditures incurred by NCUA in implementing the Sensitive Compartmented Information Facility (SCIF);
9. A detailed analysis of all expenditures that NCUA anticipates to incur with respect to the proposed risk based net worth rule, as well as all other proposed rules;
10. A formal cost-benefit analysis with respect to each rule or regulation proposed by NCUA, as well as a detailed description of the methodology employed by NCUA in conducting such analysis; and

11. A detailed reconciliation of how NCUA plans to allocate budget expenditures to achieve its strategic goals.

Many of these recommendations align with NAFCU's concerns and we would urge the Committee to call on the agency to implement these recommendations.

Advertising

Another area where NCUA could provide relief would be to amend its Rules and Regulations to accommodate for the rise of social media and mobile banking. Regulations governing advertising, such as 12 CFR 740.5, for example, contain requirements that are impossible to apply to social media and mobile banking, especially mediums that are interactive. A survey earlier this year of NAFCU members found that nearly one-in-four have a hard time advertising online or on mobile devices because of these rules. We believe these rules should be amended with the use of social media and mobile banking in mind to include more flexibility as opposed to the rigidity of the current rules. Credit unions have fared very well in safely adopting the use of such technology, and they take actions necessary to ensure their policies and procedures provide oversight and controls with regard to the risk associated by social media activities. A modernization of these rules by NCUA would clear up ambiguity and help credit unions use new technologies to better meet the needs of their members.

Examination Issues

While I have already outlined our support for the *Financial Institutions Examination Fairness and Reform Act* that was introduced in the last Congress, NAFCU believes that NCUA could take action now to vastly improve the examination process for credit unions.

NAFCU supports effective exams that are focused on safety and soundness and flow out of clear regulatory directives. However, the examination process, by its very nature, can be inconsistent. Regulatory agencies in Washington try to interpret the will of Congress, examiners in the field try to interpret the will of their agency, and financial institutions often become caught in the middle as they try to interpret all three as they run their institution. Unfortunately, the messages are not always consistent.

Exam Modernization

As part of its Regulatory Modernization Initiative, NCUA recently issued its Letter to Credit Unions (Letter No. [13-CU-09](#)). It streamlined the examination report and clarifies for credit unions the difference between a Document of Resolution (DOR) and an Examiner's Findings Report. Full implementation of these new documents began with exams that started on or after January 1, 2014.

NAFCU has concerns about the continued use of Documents of Resolution (DOR) when they are not necessary or are used in place of open and honest conversations about examiner concerns. Examiner Findings Reports should be used in place of DORs for less urgent issues. That would allow management may use its own discretion to determine the timeframe and approach for correcting those less urgent problems.

Finally, NAFCU believes NCUA should update its exam manual and provide credit unions with the updates so that they may better understand the examination process.

Consistency

One of the most troublesome complaints we hear is that NCUA examinations continue to apply regulations inconsistently. While we fully recognize that examiners must have a certain degree of discretion, as we have previously communicated to the agency, inconsistent examinations and application of regulations create unnecessary confusion and are costly.

Additionally, regulators should ensure that their regulations are consistently applied from one examiner to another. Inconsistent application of laws and regulations among examiners increases uncertainty. This increased uncertainty adds another unnecessary layer of difficulty for credit unions to maintain the highest levels of compliance.

More importantly, it is also unclear how an examiner will evaluate compliance. In addition to actual regulations, NCUA also routinely provides "guidance" in any one of a number of different forms. Some examiners treat the guidance as just that; a tool to be used for credit unions to comply with regulations or implement best practices. Some examiners, however, treat the "guidance" as if

it were part of the regulation itself, and consider failure to comply with the guidance as something roughly equal to failing to comply with the regulation. More should be done to ensure that all examiners treat both regulations and guidance consistently and for the purpose each was issued.

Unfortunately, if examinations are not conducted consistently, compliance with the ever-growing number of regulations will be ever more difficult. As a significant percent of examiners are new and with a large number retiring, NCUA will no doubt be continuing to hire new examiners. Thus, we believe that this is a critical juncture, as well as a great opportunity, for the agency to appropriately train and educate examiners so that examinations are conducted consistently. With this goal in mind, NCUA should take any and all measures it deems appropriate to achieve this goal.

Examination Appeal Process

NAFCU understands that some of our concerns cannot be addressed by regulators. Generally, NCUA and its examiners do a satisfactory job, but every inconsistency that forces credit unions to divert more resources to compliance reduces their ability to better serve their members. This ultimately translates to lower interest rates on savings, higher interest rates on loans, and in some cases, the inability to extend credit to a member that would receive credit otherwise.

NAFCU urges reforms to establish an appeals process that should provide an opportunity to identify inconsistencies and serve as a quality assurance check. The existing appeal process does not promote either. Under the existing process, if an examiner makes a determination to take action against the credit union, the credit union must first address the issues with the examiner. The second step is to contact the supervisory examiner, who evaluates the facts and reviews the analysis. If the issue is still not resolved, the credit union may send a letter to the regional director. After the previous steps have been taken, a credit union may then appeal to the NCUA Board for review of the decisions below.

The appeal process has a number of inherent flaws, not the least of which is the exclusion (in most instances) of a review by an independent third party at any level of the process. Under these

circumstances it is almost impossible to avoid conflicts of interest and approach each situation objectively.

CFPB

We would also like to acknowledge efforts by the CFPB to provide relief, such as seeking to act on the privacy notice issue in the absence of any final Congressional action and efforts to revisit some of the concerns raised about points and fees under the new QM rule. While we believe that legislative action is still necessary in both regards, the Bureau deserves credit for taking steps in the absence of Congressional action. Still, NAFCU has consistently maintained that the tidal wave of the Bureau's new regulations, taken individually, and more so in their cumulative effect, have significantly altered the lending market in unintended ways. In particular, the ability-to-repay, qualified mortgage, and mortgage servicing rules have required credit unions of various sizes and complexities to make major investments, and incur significant expenses. Taken all together, these regulations have made credit unions rework nearly every aspect of their mortgage origination and servicing operations.

Exemption Authority

One area where the CFPB could be the most helpful to credit unions would be to use its legal authority to exempt credit unions from various rulemakings. Given the unique member-owner nature of credit unions and the fact that credit unions did not participate in many of the questionable practices that led to the financial crisis and the creation of the CFPB, subjecting credit unions to rules aimed at large bad actors only hampers their ability to serve their members. While the rules of the CFPB may be well-intentioned, many credit unions do not have the economies of scale that large for-profit institutions have and may opt to end a product line or service rather than face the hurdles of complying with new regulation. While the CFPB has taken steps, such as their small creditor exemption, more needs to be done to exempt all credit unions.

Credit unions are also further hampered by the fact that the CFPB does not have one consistent definition of "small entities" from rule to rule. We are pleased that the CFPB makes an effort to meet its obligations under the Small Business Regulatory Enforcement Fairness Act (SBREFA).

However, we believe that the Bureau must do more to address the concerns of smaller financial institutions in its final rulemaking, so that new rules do not unduly burden credit unions.

Under SBREFA, the CFPB is required to consider three specific factors during the rulemaking process. First, the agency is to consider “any projected increase in the cost of credit for small entities.” Second, the CFPB is required to examine “significant alternatives to the proposed rule which accomplish the stated objective of applicable statutes and which minimize any increase in the cost of credit for small entities.” Third, the CFPB is to consider the “advice and recommendations” from small entities. 5 U.S.C. § 603(d). This directive serves an important function. When Congress passed the Dodd-Frank Act, it expected the newly established CFPB to be a proactive regulatory body. NAFCU believes the decision to subject the CFPB to SBREFA was a conscious decision to help ensure that regulations, promulgated with large entities in mind, do not disproportionately impact small financial institutions that were not responsible for the financial crisis.

Regulation E

As NAFCU outlined in our “Top Ten” list of regulations to eliminate or amend in order to better serve credit union customers, the requirement to disclose account numbers on periodic statements should be amended in order to protect the privacy and security of consumers.

Under Regulation E, credit unions are currently required to list a member’s full account number on every periodic statement sent to the member for their share accounts. Placing both the consumer’s full name and full account number on the same document puts a consumer at great risk for possible fraud or identity theft.

NAFCU has encouraged the CFPB to amend Regulation E §205.9(b)(2) to allow financial institutions to truncate account numbers on periodic statements. This modification is consistent with 12 C.F.R. § 205.9(a)(4), which allows for truncated account numbers to be used on a receipt for an electronic fund transfer at an electronic terminal. This change is also consistent with § 605(g) of the Fair Credit Reporting Act that states, “no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the

expiration date upon any receipt.” NAFCU believes that by adopting this change, the CFPB will allow financial institutions to better protect the security and confidentiality of consumer information.

Compromised accounts are not only dangerous for consumers, but can be extremely costly for credit unions. In the past year alone data breaches have cost the credit union industry millions of dollars. According to feedback from our member credit unions, in 2013 each credit union on average experienced \$152,000 in losses related to data breaches. The majority of these costs were related to fraud losses, investigations, reissuing cards, and monitoring member accounts.

As the recent high-profile data breaches at some of our nation’s largest retailers have highlighted, criminals are willing to go to great extremes to obtain consumer’s sensitive financial information. Credit unions understand the importance of steadfastly protecting their member’s confidential account information, which is why we strongly suggest this regulatory update.

Until Congress passes new legislation to ensure other third parties, such as merchants, who have access to consumer’s financial information, have effective safeguards in place to protect consumer information, the CFPB should consider this minor modification to Regulation E. This change would go a long way in keeping sensitive financial information out of the hands of criminals and reduce the increasing fraud costs borne by credit unions and other financial institutions.

Remittances

The *Dodd-Frank Act* added new requirements involving remittance transfers under the *Electronic Fund Transfer Act* (EFTA) and directed the CFPB to issue final rules amending Regulation E to reflect these additions. Under this mandate, the Bureau, released a series of final rules concerning remittances, all of which became effective on October 28, 2013.

In February 2012, the CFPB issued its first set of final rules on remittances. These rules required, among other things, remittance service providers, including credit unions, to provide a pre-payment disclosure to a sender containing detailed information about the transfer requested by the sender, and a written receipt on completion of the payment. Following the release of the February

2012, final rule, the CFPB issued on August 20, 2012, a supplemental final that provided a safe harbor for determining whether a credit union is subject to the remittance transfer regulations. Specifically, a credit union that conducts 100 or fewer remittances in the previous and current calendar years would not be subject to the rules.

In May 2013, the Bureau modified the final rules previously issued in 2012, to address substantive issues on international remittance transfers. This final rule eliminated the requirement to disclose certain third-party fees and taxes not imposed by the remittance transfer provider and established new disclaimers related to the fees and taxes for which the servicer was no longer required to disclose. Under the rule, providers may choose, however, to provide an estimate of the fees and taxes they no longer must disclose. In addition, the rule created two new exceptions to the definition of error: situations in which the amount disclosed differs from the amount received due to imposition of certain taxes and fees, and situations in which the sender provided the provider with incorrect or incomplete information.

NAFCU opposed the transaction size-based threshold for the final rule's safe harbor. The CFPB relied on an institution size-based threshold, rather than a transaction size-based threshold, in its recently released mortgage rules, and NAFCU urged the Bureau to adopt a similar approach for differentiating between remittance transfer providers. Additionally, NAFCU raised concerns with the final rule's requirement of immediate compliance if an entity exceeds the safe harbor's 100 transaction threshold. It encouraged the CFPB to allow entities who exceed the safe harbor threshold a realistic period in which to meet the standards of the final rule.

NAFCU continues to raise concerns that the regulatory burden imposed by the final rule leads to a significant reduction in consumers' access to remittance transfer services. NAFCU has heard from a number of its members that, because of the final rule's enormous compliance burden, they have been forced to discontinue, or will be forced to discontinue, their remittance programs. A 2013, NAFCU survey of our members found that over one-quarter of those that offered remittance services before the rule have now stopped offering that service to members and even more are considering dropping. Those that continue to offer remittances have been forced to significantly increase their members' fees. NAFCU encourages the CFPB to expand the threshold for the safe

harbor from the definition of “remittance transfer provider” in order to ensure that a meaningful safe harbor is established.

HMDA Changes Going Beyond the Dodd-Frank Act

The *Dodd-Frank Act* transferred *Home Mortgage Disclosure Act* (HMDA) rulemaking authority to the CFPB and directed the Bureau to expand the HMDA dataset to include additional loan information that would help in spotting troublesome trends. Specifically, Dodd-Frank requires the Bureau to update HMDA regulations by having lenders report the length of the loan, total points and fees, the length of any teaser or introductory interest rates, and the applicant or borrower’s age and credit score. However, in its proposal, the Bureau is also contemplating adding additional items of information to the HMDA dataset. NAFCU has urged the CFPB to limit the changes to the HMDA dataset to those mandated by Dodd-Frank.

HMDA was originally intended to ensure mortgage originators did not “redline” to avoid lending in certain geographical areas. The HMDA dataset should be used to collect and provide reasonable data for a specific reason. The Bureau contends that it is going beyond Dodd-Frank’s mandated changes to get “new information that could alert regulators to potential problems in the marketplace” and “give regulators a better view of developments in all segments of the housing market.” These open-ended statements could be applied to virtually any type of data collection, and do not further the original intent of HMDA. NAFCU urged the CFPB to amend the dataset to advance the original purpose of HMDA, rather than using it as a vehicle to “police” its recent Qualified Mortgage rules.

The various mortgage-related regulations promulgated by the CFPB have exponentially increased credit unions’ regulatory burden and compliance costs. Any additions to the HMDA dataset will create even more operational expenses for credit unions. Credit unions that collect and report HMDA data through an automated system will have to work with their staffs and vendors to update their processes and software. Those without automated systems will experience particularly significant implementation costs. The CFPB should eliminate unnecessary regulatory burden and compliance costs by limiting the changes to the HMDA dataset to those mandated by Dodd-Frank.

TILA/RESPA

Dodd-Frank directed the CFPB to combine the mortgage disclosures under the *Truth in Lending Act* and *Real Estate Settlement Procedures Act*. Under this mandate, the Bureau, in November 2013, released the integrated disclosures rule. This 1900-page rule requires a complete overhaul of the systems, disclosures, and processes currently in place for a consumer to obtain a mortgage. For example, the rule mandates the use of two disclosures: the three-page Loan Estimate (which replaces the Good Faith Estimate and initial Truth in Lending Disclosure); and the five-page Closing Disclosure (which replaces the HUD-1 and final Truth in Lending disclosure). There are also a number of stringent timing requirements and other substantive changes lenders must follow. The rule is effective August 2015, but lenders are still feeling pressure to be compliant on time. The sheer magnitude of this rule, read in conjunction with the totality of the other mortgage rules, has created a very burdensome regulatory environment and many credit unions are finding it difficult to continue lending. Credit unions must comply with the current disclosure requirements, which are extensive, and they must prepare their compliance solutions for the upcoming ones effective in August 2015, further exacerbating costs.

Qualified Mortgages

NAFCU continues to have serious concerns about the “Qualified Mortgage” (QM) standard. In short, given the unique member-relationship credit unions have, many make good loans that work for their members that don’t fit into all of the parameters of the QM box and fall into the “non-qualified mortgage” category. NAFCU would support the changes below to the QM standard to make it more consistent with the quality loans credit unions are already making. Further, credit unions should have the freedom to decide whether to make loans within or outside of the standard without pressure from regulators.

Points and Fees

NAFCU strongly supports bipartisan legislation to alter the definition of “points and fees” under the “ability-to-repay” rule. NAFCU has taken advantage of every opportunity available to educate and discuss with the CFPB on aspects of the ability-to-repay rule that are likely to be problematic for credit unions and their members. While credit unions understand the intention of the rule and

importance of hindering unscrupulous mortgage lenders from entering the marketplace, it is time for Congress to address unfair and unnecessarily restrictive aspects of this CFPB rule.

NAFCU supports exempting from the QM cap on points and fees: (1) affiliated title charges, (2) double counting of loan officer compensation, (3) escrow charges for taxes and insurance, (4) lender-paid compensation to a correspondent bank, credit union or mortgage brokerage firm, and (5) loan level price adjustments which is an upfront fee that the Enterprises charge to offset loan-specific risk factors such as a borrower's credit score and the loan-to-value ratio.

Making important exclusions from the cap on points and fees will go a long way toward ensuring many affiliated loans, particularly those made to low- and moderate-income borrowers, attain QM status and therefore are still made in the future.

Loans Held in Portfolio

NAFCU supports exempting mortgage loans held in portfolio from the QM definition as the lender, via its balance sheet, already assumes risk associated with the borrower's ability-to-repay.

40-year Loan Product

Credit unions offer the 40 year product their members often demand. To ensure that consumers can access a variety of mortgage products, NAFCU supports mortgages of duration of 40 years or less being considered a QM.

Debt-to-Income Ratio

NAFCU supports Congress directing the CFPB to revise aspects of the 'ability-to-repay' rule that dictates a consumer have a total debt-to-income (DTI) ratio that is less than or equal to 43 percent in order for that loan to be considered a QM. This arbitrary threshold will prevent otherwise healthy borrowers from obtaining mortgage loans and will have a particularly serious impact in rural and underserved areas where consumers have a limited number of options. The CFPB should either remove or increase the DTI requirement on QMs.

Legal Opinion Letters

In attempting to understand ambiguous sections of CFPB rules, NAFCU and many of its members have reached out to the CFPB to obtain legal opinion letters as to the agencies interpretation of its regulations. While legal opinion letters don't carry the weight of law, they do provide guidance on ambiguous sections of regulations. Many other financial agencies such as NCUA, FTC, FDIC and others issue legal opinion letters so as to help institutions and other agencies understand otherwise ambiguously written rules. The CFPB has declined to do so. What they have done is set up a help line where financial institutions can call for guidance from the agency. While this is helpful, there are reports of conflicting guidance being given depending on who answers the phone. This is not just unhelpful, but confusing when NCUA examines credit unions for compliance with CFPB regulations.

Federal Reserve Board

NAFCU has long encouraged the Federal Reserve to update Regulation D. This issue is also on NAFCU's "Dirty Dozen" and "Top Ten" list. Regulation D generally imposes reserve requirements on depository institutions with transaction accounts or nonpersonal time deposits, and requires reporting to the Federal Reserve. The regulation aims to facilitate monetary policy and ensure sufficient liquidity in the financial system. It requires credit unions to reserve against transaction accounts, but not against savings accounts and time deposits.

NAFCU believes the Federal Reserve Board should revisit the transaction limitation requirements for savings deposits. The six-transaction limit imposes a significant burden on both credit union members in attempting to access and manage their deposits and credit unions in monitoring such activity. Member use of electronic methods to remotely access, review and manage their accounts, as well as the contemporary transfer needs of members and consumers at all types of financial institutions, make a monthly transaction limit an obsolete and archaic measure. Should the Board decide not to outright remove the transaction limitation requirement for savings deposits, NAFCU has urged the Board to raise the current limitation from six to twelve transactions. If the Board fails to act in this area, we believe Congress should be ready to address this issue. We were pleased to see House Financial Services Committee Chairman Jeb Hensarling and Representative Robert Pittenger request a GAO study on this issue.

FHFA

In September 2014, FHFA released a proposed rule that would establish new asset threshold for both FHLB applications and ongoing membership. Specifically, FHLB members and applicants would be required to keep 1 percent of assets in home mortgage loans. Also, current FHLB members would be required to hold at least 10 percent of assets in residential mortgage loans on an ongoing basis – a marked change from the current rule, which only requires this 10 percent threshold at the application stage. The proposal would also require FHLBs to evaluate member compliance annually and to terminate membership after two consecutive years of noncompliance.

This proposed rule threatens to severely hamper credit unions' access to the valuable services the FHLBs provide and must be carefully considered for its full impact before moving forward. In 2007, 11.4% of credit unions were members of an FHLB, representing 61.7% of total credit union assets. Today, however, 19% of all credit unions are members of an FHLB, and these credit unions represent 75.8% of the total credit union assets and this number continues to grow. This growth of credit union membership in FHLBs only underscores the need to ensure that the eligibility requirements for membership in FHLBs are set appropriately. Unfortunately, this proposal would disenfranchise over 1 million credit union member-owners from receiving the benefits of FHLB resources as their institution's membership would be terminated under the newly proposed requirements.

While NAFCU appreciates FHFA's intention of fostering FHLB's housing finance missions, we believe the current regulatory requirements effectively ensure that FHLB members demonstrate ongoing commitments to mortgage lending in their communities. For example, when an FHLB member borrows an advance, it must provide eligible collateral to secure the advance. Nearly all eligible types of collateral, which are determined by Congress, are related to housing. In addition, current members must certify their active support of housing for first-time homebuyers to the FHFA every two years through the Community Support Statement. Further, FHFA has failed to provide any data or empirical evidence to support its claims that the FHLB system is at risk because some members may not meet the proposed asset percentage requirements on an ongoing basis. Given the sufficient existing requirements, and the lack of statistical support for the proposed

changes, NAFUCU does not believe FHFA needs to move forward with the newly proposed “ongoing” membership requirements for depository institutions in this rulemaking.

Further exacerbating this issue for credit unions is the statutory exemption for FDIC-insured banks with under \$1.1 billion in assets from the 10% requirement as outlined in the *Federal Home Loan Bank Act*. In addition to seeking changes to the underlying FHFA proposal, NAFUCU believes this discrepancy also needs to be addressed to ensure an even playing field between all financial institutions including credit unions on this matter. We would urge the committee to act on this matter and create parity for credit unions.

IX. Department of Defense (Military Lending Act Proposed Rule)

NAFUCU is in full support of protecting servicemembers from predatory and unscrupulous lenders. It is clear this is the intent of the proposed rule DoD has issued. Unfortunately, and unlike the original regulation promulgated by DoD in 2007, this rule does not take into account the unintended consequences to the financial industry. While well-intentioned, the rule creates a significant and unnecessary regulatory burden on financial institutions particularly for small community institutions like credit unions.

The burden is significant because it will force all lenders to add an extra time consuming and costly step to essentially every extension of consumer credit. Under the DoD proposed rule, all lenders would be forced to determine if any individual receiving consumer credit is a servicemember or a dependent of a servicemember. While the rule provides flexibility in the manner in which a lender could determine the status of a borrower, it only grants a safe harbor from civil and potentially criminal penalties if the lender uses the Defense Manpower Data Center (DMDC) database. Additionally, even this safe harbor can become invalid if it is found that financial institution had actual knowledge of a borrower’s status.

This presents a number of issues for credit unions particularly small credit unions. First, every lender would be forced to review all information and documentation on every existing member or

customer to determine if they have actual knowledge of the status of that particular individual. This would produce a significant cost to a lender to not only review all records but also to implement a system of checks to ensure that any information given to them in the future that could serve as actual knowledge is documented.

Second, lenders would have to institute a set of procedures to check the DMDC database for every extension of consumer credit. Credit unions would either have to manually check the database in every situation or pay what could amount to an enormous cost to integrate an automated system into their current systems. This burden would be created for virtually every extension of credit to identify individuals that may make-up less than 1% of a credit union's membership.

As noted, NAFCU supports providing servicemembers with protections, and if incurring the unintended consequences of this rule was the only way to protect service members, this would certainly be a different discussion. What is most perplexing about the DoD rule is the fact that there is a very simple solution to this problem that would significantly reduce the burden on credit unions and lenders while still providing servicemembers with the same protections. This solution is self-identification. If service members self-identify themselves, virtually all the unnecessary burden of the rule would be mitigated and service members would still receive the protections intended by the rule. This method has worked extremely well with the interest rate reduction required under the *Servicemembers Civil Relief Act (SCRA)*.

Another major concern regarding the rulemaking has been the process. While this rule will effectively cover almost every lender in the nation, the Department of Defense has refused to meet with industry to discuss how this rule could be implemented in the most effective manner. Given the opportunity, we believe that industry could make a valuable contribution to ensuring this rule works both effectively and efficiently.

X. Regulatory Coordination is also Needed

With numerous new rulemakings coming from regulators, coordination between the agencies is more important than ever. Congress should use its oversight authority to make sure that regulators are coordinating their efforts and not duplicating burdens on credit unions by working independently on changes to regulations that impact the same areas of service. There are a number of areas where opportunities for coordination exist and can be beneficial. We outline two of them below.

Financial Stability Oversight Council (FSOC)

NAFCU has been on the forefront encouraging the FSOC regulators to fulfill their Dodd-Frank mandated duty to facilitate rule coordination. This duty includes facilitating information sharing and coordination among the member agencies of domestic financial services policy development, rulemaking, examinations, reporting requirements and enforcement actions. Through this role, the FSOC is effectively charged with ameliorating weaknesses within the regulatory structure and promoting a safer and more stable system. It is extremely important to credit unions for our industry's copious regulators to coordinate with each other to help mitigate regulatory burden. We urge Congress to exercise oversight in this regard and consider putting into statute parameters that would encourage the FSOC to fulfill this duty in a thorough and timely manner.

Data Security

Outside of advocating for federal legislation with regard to the safekeeping of information and breach notification requirements for our nation's retailers, NAFCU has also urged regulatory coordination for credit unions already in compliance with the stringent standards in the *Gramm-Leach-Bliley Act*. In the wake of the massive Target data breach in December 2013 the Federal Trade Commission began exploring a range of regulatory options to assist consumers, businesses, and financial institutions. Moving forward, it is imperative that NCUA ensure that credit unions are protected from any unnecessary regulatory burden and continue to allow them to provide quality services to their members.

Congress must also act to establish a national data security standard for retailers who hold personal financial data. The financial services industry has been subject to such a standard since the passage of Gramm-Leach-Bliley in 1999, it's time for others who hold financial data are held to a similar

standard. While it is not the subject of this hearing, we hope that the Committee will make addressing data security concerns one of its priorities in the 114th Congress.

XI. Conclusion: All Credit Unions Need Regulatory Relief

The growing regulatory burden on credit unions is the top challenge facing the industry today and credit unions are saying “enough is enough” when it comes to the overregulation of the industry. All credit unions are being impacted regardless of asset size. This burden has been especially damaging to smaller institutions that are disappearing at an alarming rate. The number of credit unions continues to decline, as the compliance requirements in a post Dodd-Frank environment have grown to a tipping point where it is hard for many smaller institutions to survive. Those that do are forced to cut back their service to members due to increased compliance costs.

Credit unions want to continue to aid in the economic recovery, but are being stymied by this overregulation. NAFCU appreciates the Committee holding this hearing today. Moving forward, we would urge the Committee to act on credit union relief measures pending before the Senate and the additional issues outlined in NAFCU’s Five Point Plan for Credit Union Regulatory Relief and NAFCU’s “Top Ten” list of regulations to review and amend. Additionally, Congress needs to provide vigorous oversight to the NCUA’s proposed risk-based capital rule and be ready to step in and stop the process so that the impacts can be studied further. Finally, the Committee should also encourage regulators to act to provide relief where they can without additional Congressional action.

We thank you for the opportunity to share our thoughts with you today. I welcome any questions you might have.