Testimony of

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On behalf of

The National Association of Federal Credit Unions

"Examining Legislative Proposals to Reform the Consumer Financial Protection Bureau"

Before the

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Financial Institutions and Consumer Credit Subcommittee

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Introduction

Good afternoon Chairman Capito, Ranking Member Meeks and Members of the Subcommittee. My name is Lynette Smith and I am testifying today on behalf of the National Association of Federal Credit Unions (NAFCU). I serve as the President and CEO of Washington Gas Light Federal Credit Union in Springfield, Virginia. Washington Gas Light FCU has more than 6,700 members with assets over $89 million.

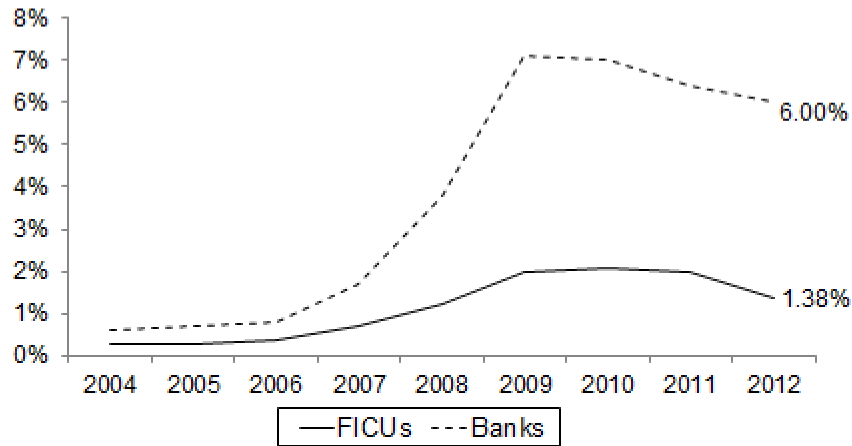
At Washington Gas Light our mission is to "Bring our Members Financial Dreams to Light." We oftentimes find ourselves as a lender of last resort for members with challenging credit histories. We pride ourselves in educating our members, by offering a series of seminars providing financial literacy education tools that empower them to manage their personal goals from buying a home to retirement planning. We also help them take advantage of the free automated services we provide such as bill pay and home banking.

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 68 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 legislative proposals to reform the Consumer Financial Protection Bureau (CFPB).

Credit Unions and the Financial Crisis

As widely recognized by Members of Congress on both sides of the aisle, credit unions were not the cause of the financial crisis. Examination of lending data during the crisis clearly indicates that credit union mortgage lending outperformed bank mortgage lending. This is due in part to the fact that credit unions were not the cause of the proliferation of sub-prime loans, instead focusing on placing their members in solid products they could afford. The graphs below highlight how credit unions have fared better than their bank counterparts with respect to real estate delinquencies and real estate charge-offs.

Real Estate Delinquencies*



FICU delinquencies are 60 days or more late; bank delinquencies are 90 days or more late
Source: NCUA, FDIC

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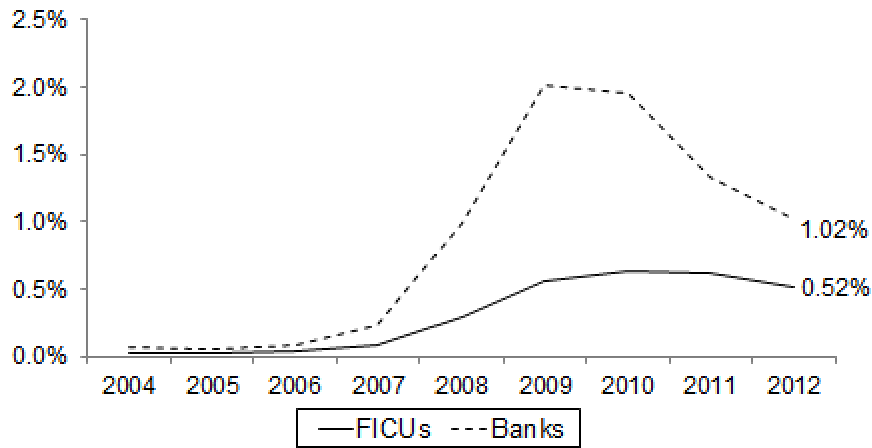
Real Estate Charge-offs



Source: NCUA, FDIC

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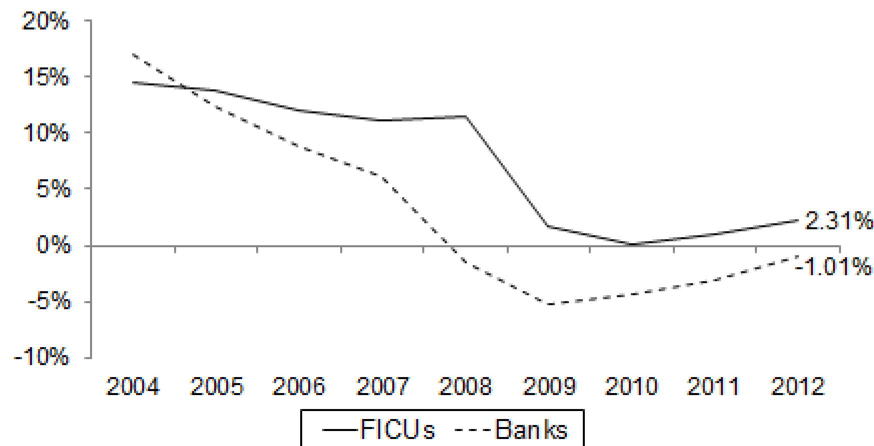
The final graph below highlights how credit union real estate loan growth outpaced banks' at the height of the financial crisis and beyond. In short, not only did credit unions act as responsible lenders during the financial crisis, they actually helped blunt the crisis by continuing to lend to credit worthy members during difficult times.



In evaluating the regulatory environment credit unions faced before the financial crisis and the enactment of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* [P.L.111-203], it is important to understand credit unions have always faced restrictions on who they can serve and on their ability to raise capital. There are many consumer protections already built into the *Federal Credit Union Act*, such as the only federal usury ceiling on financial institutions and the prohibition on pre-payment penalties, that other institutions are not subject to and have often used to trap consumers in high cost products.

Credit Unions and the Consumer Financial Protection Bureau

NAFCU has long recognized the need for additional consumer protection in the financial services arena, and from the moment the Obama Administration released its "white paper" in June 2009 calling for the creation of a CFPB-like entity, NAFCU supported additional regulation for bad actors and the unregulated. As Congress contemplated legislative action and whether or not a CFPB- like entity should be put into place, NAFCU consistently supported a consumer financial protection regime structured in such a way that it would regulate the bad actors and

unregulated entities that pose the biggest threat to consumers while maintaining the regulatory regime that had worked for credit unions. Because consumer protection provisions already existed in the *Federal Credit Union Act* that laws governing other institutions did not have, NAFCU was the only financial services trade association to oppose credit unions of any size being placed under the CFPB's direct regulatory authority. Despite the fact that credit unions are already heavily regulated and did not contribute to the financial crisis, credit unions of all sizes are still subject to the rulemaking authority of the CFPB. While some may argue that the CFPB is "leveling the playing field" for community-based financial institutions, the reality could not be further from the truth, as smaller community-based financial institutions do not have the armies of lawyers that large Wall Street banks have to keep up with the pace of regulations coming out of the CFPB. In a September 2013 survey of NAFCU-member credit unions, only 4% of respondents said that the CFPB regulating previously unregulated entities has had a positive impact on their credit union.

I cannot emphasize enough how burdensome and costly the unnecessary and duplicative compliance costs are to credit unions. A survey of NAFCU members from late last year found that 94% have seen their regulatory burden increase since enactment of the *Dodd-Frank Act* in 2010. With thousands of pages of CFPB rules and proposals to interpret and ultimately comply with, the regulatory onslaught continues for credit unions. As the Subcommittee is aware, credit unions, many of which have very small compliance departments, and in some cases a single compliance officer, must comply with the same rules and regulations as our nation's largest financial institutions that employ countless numbers of lawyers and compliance staff. The impact of increased regulatory burden is also evident as the number of credit unions continues to decline. There are 700 fewer credit unions today than there were before passage of the *Dodd-Frank Act*.

While NAFCU member credit unions continue to weigh in on various CFPB proposals and work with CFPB staff to help educate them on the unique nature of credit unions, NAFCU believes some fundamental structural changes at the CFPB could be helpful. We believe changes could improve the CFPB's operations, give it the proper oversight and result in better understanding between the Bureau and entities it regulates.

CFPB Governance

Among these improvements, NAFCU supports the concept of creating a five person board or commission to govern the CFPB. The CFPB has been given an extremely broad authority to regulate any financial product across the financial services industry. Given the enormity of the authority entrusted to the CFPB, NAFCU believes a five person board has benefits over a single director. No matter how qualified and competent a single individual is, a commission setup would allow for multiple consumer perspectives to be brought to the table in the CFPB decision making process. This would allow a healthy debate on new proposals before they are issued and not subject the agency to the agenda of a single director. If the board were to have staggered terms, such a set-up would help ensure a degree of continuity in the Bureau's leadership and serve as a stabilizing force.

Financial Services Chairman Emeritus Spencer Bachus and the Financial Institutions and Consumer Credit Subcommittee Vice Chairman Sean Duffy have been particularly active in introducing legislation on this topic and NAFCU thanks them for their leadership.

Financial Stability Oversight Council

While NAFCU was pleased to see the Financial Stability Oversight Council (FSOC) granted some "veto" authority over some proposed rules if they are found to create safety and soundness concerns, we believe the current veto authority does not go far enough. NAFCU supports and urges adoption of legislation that would modify the threshold needed for the FSOC to veto a proposed rule, and that clarifies the standard of what can be considered. We believe the requirement that a majority of the FSOC (minus the CFPB Director) could veto a CFPB rule is a positive step that ensures safety and soundness concerns do not take a back seat in today's heavy regulatory environment.

It is also worth mentioning that 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. I cannot emphasize enough how important it is 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.

CFPB Data Collection

As you know, the CFPB has broad authority to collect information from credit unions from a variety of sources including exam reports and consumer complaints. As the CFPB works to exercise this authority, NAFCU has consistently cautioned that data collection efforts must include layers of protection to ensure sensitive personal information is not compromised. Specifically, NAFCU has expressed concern about the response intake fields on the CFPB's consumer complaint form and has asked that the Bureau outline implementing procedures to ensure that employees handle this information with care. In an effort to minimize the potential for problems, NAFCU believes the CFPB should start by simply minimizing the breadth and scope of the personal information requested. NAFCU has also expressed similar concerns to the Treasury Department as it creates a records system for the CFPB. Unfortunately, the CFPB has not done enough to wane our concerns. In fact, the Federal Reserve's inspector general recently found "weaknesses" in the agency's security program and the Government Accountability Office has similarly expressed concerns about data security.

Accordingly, NAFCU supports legislative efforts to help ensure that the government, including the CFPB, does everything possible to take great care in handling this information. With a constantly shifting regulatory environment driven by an inordinate amount of new rule writing, the last thing credit unions should have to worry about is the personal information of their member-owners being lost or stolen at the hands of the government. Credit unions have strict privacy procedures they must follow and the CFPB should also be held to stringent standards. We also believe the CFPB should consider risks associated with credit unions' well-earned reputation as entities that protect their members' interests.

CFPB Funding Mechanism

NAFCU believes that Congress should change the funding mechanism for the CFPB to require annual Congressional appropriations. We believe that subjecting the Bureau to the traditional appropriations process would allow for better oversight of this powerful agency. One aspect to consider in this approach could be to require that a majority of CFPB resources are focused on regulating the previously unregulated and not just used as more money spent to regulate those that are regulated by their own functional regulators. Given that the CFPB is in its infancy, NAFCU believes Congress should retain every oversight tool possible to ensure such a balance is being met and that the Bureau remains responsive to Congress.

Additional Suggestions for Improving the CFPB

In the wake of the financial crisis, and as the *Dodd-Frank Act* is implemented, it's clear that credit unions face more regulatory compliance burden than ever before. A survey of NAFCU member credit unions from earlier this year found that 88% said compliance costs have increased. Half of the same respondents said that, if not for the regulatory burden and compliance costs associated with Dodd-Frank, they would be able to offer their members lower loan rates, lower fees, and additional or enhanced member services.

Given the extreme regulatory landscape credit unions face, NAFCU has been active in reaching out to member credit unions to identify those areas where regulatory relief is essential. In February of this year, NAFCU unveiled and shared with a Congress a five-point plan that would greatly assist our nation's credit unions and their 96 million member owners. There are provisions in this plan, parts of which are contained in House Financial Services Committee Vice Chairman Gary Miller's the *Regulatory Relief for Credit Unions Act of 2013* (H.R. 2572), aimed at enhancing the ability of the CFPB to work with credit unions in a mutually conducive and productive way.

For example, H.R. 2572 would authorize the National Credit Union Administration (NCUA) to step in where appropriate to modify or delay application of a CFPB rule affecting credit unions

as long as the goal of the rule is still met. Since the modified rule would be substantially similar to the original rule, and achieve the same goal, the argument that this would undermine the CFPB's intentions is not valid. An example of where this is necessary is the new remittance rule. As part of regulatory relief in 2006 (P.L. 109-351), Congress explicitly granted all credit unions the ability to offer remittance services to anyone in their field of membership in an effort to draw the unbanked and under-banked into the system by familiarizing them with credit unions. The CFPB's new rule, since it can't tailor it specifically to credit unions, will likely drive many credit unions out of the remittance business altogether. A recent NAFCU survey found that 25% of respondents currently making remittances transfers will stop offering this service when the new rule takes effect. If NCUA had greater flexibility, this issue may be able to be addressed. NCUA already has had this type of authority in the past in conjunction with other regulators, and has this authority now with tailoring *Truth in Savings* to the unique nature of credit unions.

H.R. 2572 would also require that the NCUA and the CFPB revisit cost/benefit analyses of rules after three years so they have a true sense of the compliance costs for credit unions. Many credit unions find that the time estimated by a regulator to comply with a new proposal is often vastly understated, making it hard to allocate staff and resources for compliance. Currently, regulators rarely revisit compliance estimates after they are made meaning the true compliance burden of new rules is often unrecognized or underestimated by the regulator. A requirement that the CFPB and NCUA look-back on cost-benefit analysis after three years will provide incentive for the estimates to be well thought out and succinct from the onset. The goal of this provision is to create a truth-in-compliance burden estimation not only so credit unions are able to properly plan in allocating staff hours and resources, but also to foster a better understanding between credit unions and their regulators in terms of how various rules and regulations are implemented in practice. Enacting this provision would encourage regulators to make a *true* cost-benefit analysis of a new rule. The regulators would be required to revisit and modify any rule for which the cost of compliance was underestimated by more than 20%. This gives the regulator room to work while ensuring credit unions are treated fairly throughout the process.

While many of the remaining provisions fall outside the scope of today's hearing, NAFCU would like to draw your attention to other important provisions in the *Regulatory Relief for Credit Unions Act of 2013* (H.R. 2572*)*. In addition to the provisions outlined above, the bill would:

- establish a risk-based capital system for credit unions;
- allow the NCUA to grant federal credit unions a waiver to follow a state rule instead of a federal one in certain situations;
- require the 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; and
- provide credit unions parity with FDIC-insured institutions when it comes to deposit insurance coverage on Interest on Lawyers Trust Accounts (IOLTAs).

Conclusion

In conclusion, I want to thank the subcommittee for holding this important hearing today. While we believe that the CFPB can fill an important role in regulating the previously unregulated bad actors that operate in the financial services marketplace, credit unions remain at a loss as to why they were placed under a new regulatory regime to begin with as it has meant an overwhelming increase in regulatory burden. Given the fact that the CFPB is here to stay, we think it is important that Congress examine ways to improve the Bureau and we applaud the Subcommittee for having this discussion. We welcome the opportunity to have an ongoing dialogue with Congress on ways to improve the structure, governance and authorities of the CFPB.

Thank you for the opportunity to appear before you today. I welcome any questions you may have.