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The Honorable Andy Barr  
Chairman  
Subcommittee on Financial Institutions and  
Monetary Policy  
Committee on Financial Services  
United States House of Representatives  
Washington, DC 20515

The Honorable Bill Foster  
Ranking Member  
Subcommittee on Financial Institutions  
and Monetary Policy  
Committee on Financial Services  
United States House of Representatives  
Washington, DC 20515

Dear Chairman Barr and Ranking Member Foster,

On behalf of America's credit unions, I am writing regarding your committee's hearing entitled, "Consumer Financial Protection Bureau: Ripe for Reform." CUNA represents America's credit unions and their more than 130 million members.

### **General Comment**

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

Unfortunately, the Consumer Financial Protection Bureau (CFPB or Bureau) has missed many opportunities to leverage credit unions' mission and history to the benefit of consumers and finalized regulations that ultimately hampered credit unions and their members. Consumers lose when one-size-fits-all rules force credit unions to pull back safe and affordable options from the market, pushing consumers towards predatory entities engaged in the very activity the CFPB's rules were designed to curtail. Under Director Rohit Chopra's tenure, the Bureau has repeatedly failed to recalibrate its approach to regulation in a manner that fulfills its consumer protection mission without impeding consumers' access to credit or safe and affordable financial products and services.

Credit unions' commitment to member service is a key reason why credit union members are among the most financially healthy in America and agree that their credit union cares about them. According to CUNA's 2022 National Voter Poll, consumers who use credit unions are 40 percent more likely than their counterparts who do not use credit unions to respond "very positively" to the fact that they "can trust" their financial institution. Further, credit union members are 45 percent more likely than nonmembers to respond "very positively" to the fact that their institution "cares about" their financial well-being and are 52% more likely to say their institution "has positively impacted" their financial well-being. This sentiment reflects exactly the type of relationship banking that Director Chopra has stated he wanted to become commonplace in the consumer financial services market.

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

### **Use the Bureau's authority in a manner consistent with the original purpose of the CFPB and the spirit of the Dodd-Frank Act**

Congress created the CFPB specifically to address the irresponsible lending and banking practices of large too-big-to-fail banks and unregulated sectors of the consumer financial services marketplace. These entities are where the Bureau should dedicate most of its time and resources. If the Bureau spent fewer resources on regulating and supervising credit unions and other small lenders subject to federal prudential regulation, then it will have more time available to focus on the businesses actively engaged in objectionable practices that exploit consumers. We believe this balance can be accomplished without sacrificing important consumer protections.

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

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

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

*The Bureau, by rule, may conditionally or unconditionally exempt **any class of covered persons**, service providers or consumer financial products or services from any provision of this title, or from any rule issued under this title . . . .<sup>1</sup>(Emphasis added.)*

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

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

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

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

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

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

## **Regularly engage stakeholders throughout the policymaking process**

The Bureau has invited feedback from stakeholders on its rulemakings and, to a lesser degree, its policy initiatives. This stakeholder engagement has taken the form of formal comment periods but also, more importantly, direct engagement with credit unions through meetings, roundtables, and other forums. As not-for-profit, member-owned cooperatives, credit unions are not beholden to the profit-first motivations and behaviors that are characteristic of for-profit financial service providers. While the CFPB may have some awareness of this distinction, we believe it is still essential for government leaders to directly engage with credit unions on a regular basis to fully understand our unique business model.

While culture changes in the wake of the pandemic upended the Bureau’s capacity to regularly engage with stakeholders in-person, we believe there is no reasonable excuse for limiting stakeholders’ ability to consistently engage with the CFPB to discuss matters of significant concern virtually or otherwise. An inability to regularly interface with CFPB staff and leadership significantly undermines efforts to promote understanding, transparency, and accountability. We strongly encourage the Bureau to facilitate more opportunities for credit unions to provide input to the Bureau directly than has been the case in recent months.

It is essential for the CFPB to return to the practice of regular stakeholder engagement and participation in the regulatory process, including preserving the Credit Union Advisory Council (CUAC), using the Request for Information (RFI) and Advance Notice of Proposed Rulemaking (ANPR) processes to solicit additional stakeholder views, hosting formal and informal meetings with credit unions both in D.C. and elsewhere, and working with the Small Business Administration (SBA) to ensure that the Small Business Regulatory Enforcement Fairness Act (SBREFA) process is fair and effective. These efforts combine to bolster the agency’s understanding of the credit union business model and how regulations and additional requirements affect operations and service to consumers.

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

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

## **Provide certainty to regulated entities by adopting clear “rules of the road” and prioritizing internal consistency**

The past decade has seen a massive increase in new consumer financial services regulations. This environment is particularly burdensome for credit unions which, unlike big banks, do not have scores of legal experts in house to assist with compliance questions. Given the heightened nature of the regulatory landscape, it is important that the Bureau provide certainty to regulated entities through the adoption of clear “rules of the road,” internal consistency from the Director’s office down to the field examiners, and robust guidance and implementation support.

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

Regarding clarity, we oppose the Bureau adopting a “regulation by enforcement” or “regulation by press release” approach to policymaking. We believe if the Bureau wants to make actionable policy, then it should consider proposing clear regulations pursuant to the Administrative Procedure Act (APA) process instead of using its enforcement authority against financial institutions expecting the subsequent consent order to serve as a means for others to determine what practices are in violation of the law. We also caution against an unproductive and inflammatory “regulation by press release” approach to governance characterized by clearly politicized press releases intended to serve as a bully pulpit.

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

The Bureau prides itself on being a modern, data-driven regulator. Former CFPB Director Richard Cordray often referred to the data beneath consumer complaints as the Bureau’s “compass,” playing a key role in identifying and prioritizing the Bureau’s actions, including in the realm of rulemakings. However, data for data’s sake is insufficient, and it is critical that the Bureau’s policy and regulatory decisions be wholly supported by relevant, timely, representative data. Unfortunately, it has been common for a CFPB rulemaking to lack (or at least appear to the public to lack) sufficient evidence, data, research, or other information to substantiate assertions within the rulemaking. We challenge the CFPB to set a new standard for evidence-based rulemaking decisions and processes.

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

### **Ensure continued access to credit from reputable providers**

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

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

Innovation, through technology and other creative solutions, has the potential to enhance the delivery and quality of financial products and services to consumers. In recent years, credit unions have been at the vanguard of innovation as a byproduct of their cooperative nature, member-driven focus, and relatively small size. Consumers benefit when financial institutions are provided with more opportunities, under the careful oversight of regulators, to pursue fresh answers to traditional questions. For this reason, CUNA supported the Bureau’s efforts to revitalize its approach to innovation through the adoption of mechanisms like the revised Trial Disclosure Program, the No-Action Letter Policy, and the regulatory “sandbox” policy. These policies should be maintained and, where appropriate, expanded upon. However, the Bureau should not approach innovation in a manner that places traditional depository institutions at a disadvantage compared to another business model. Ultimately, credit unions must be given equal access to innovation policies and programs.

### **CUNA Support of CFPB Reform Legislative Proposals**

Finally, we are encouraged to see the thoughtful policy ideas included in the legislation attached to this hearing. Many of these policy proposals would provide much-needed reforms to the CFPB that are in line with the principles listed above, and we would like to make note of three bills that CUNA has publicly supported:

- *The Taking Accountable Bureaucratic Spending Act* – We support this legislation that is in line with CUNA’s longstanding position that the CFPB is funded through the appropriations process. The Bureau’s actions and policies impact a massive part of the global economy, and we support actions to make the agency more transparent and accountable to Congress.
- *The Consumer Financial Protection Commission Act* - We support this legislation because the current structure—with a single, powerful director—gives too much authority to one person and does not provide enough oversight and accountability. While there are many measures the Bureau must take to improve the regulatory landscape, Congress also has a responsibility to act to ensure that the Bureau can be an effective

agent of consumer protection no matter which political party controls the White House. Congress should enact this legislation that changes the leadership structure to a multimember, bipartisan commission.

- *The Transparency in CFPB Cost-Benefit Analysis Act* – We support this legislation because credit unions have long championed a cost-benefit analysis requirement for Bureau rulemakings. The Bureau has a massive effect on businesses, consumers, and the economy at large, and its proposed regulations must include a thorough analysis of that effect.

## **Conclusion**

On behalf of America's credit unions and their more than 130 million members, thank you for holding this markup and considering our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Nussle". The signature is fluid and cursive, with a large initial "J".

Jim Nussle  
President & CEO