



November 30, 2023

The Honorable Sherrod Brown  
Chairman  
Committee on Banking, Housing  
and Urban Affairs  
United States Senate  
Washington, DC 20510

The Honorable Tim Scott  
Ranking Member  
Committee on Banking, Housing  
and Urban Affairs  
United States Senate  
Washington, DC 20510

Dear Chairman Brown and Ranking Member Scott:

On behalf of the Credit Union National Association (CUNA) and the National Association of Federally-Insured Credit Unions (NAFCU), we are writing regarding the Committee's hearing entitled, "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress." CUNA and NAFCU represent America's credit unions and their more than 138 million members.

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

Both of our associations have long held the position that, given the broad authority and awesome responsibility vested in the Consumer Financial Protection Bureau (CFPB or Bureau), a five-person commission has distinct consumer benefits over a single director. Regardless of how qualified one person may be, including the current leadership of the agency, a commission would allow multiple perspectives and robust discussion of consumer protection issues throughout the decision-making process. Additionally, a commission helps ensure some continuity of expertise and rulemaking. The current single director structure can lead to uncertainty during the transition from one Presidential administration to another. The U.S. Supreme Court highlighted this fact when it released a decision in *Seila Law v. the Consumer Financial Protection Bureau* that found the single director, removal only for "just cause" structure of the CFPB to be unconstitutional. It is with this in mind that we urge Congressional action on legislation to transform the structure of the CFPB from a single director to a bipartisan commission.

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

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

**Use the Bureau's authority in a manner consistent with the original purpose of the CFPB and the spirit of the Dodd-Frank 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 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 (Emphasis added.)*

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

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

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

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

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

Relatedly, we encourage the Bureau to regularly conduct reviews of its regulations in the interest of streamlining and eliminating outdated or superfluous requirements, increasing the efficiency of rules, or to provide exemptions where appropriate. However, it is critical that the Bureau keep in mind that any change in regulation—even a change intended to reduce complexity—always comes with a cost. For most Bureau rulemakings, the Dodd- Frank Act and the Regulatory Flexibility Act provide specified review processes intended to assist in identifying necessary or appropriate regulatory changes after the rule has been “in the field” for a reasonable time 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.

### **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” 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. The Bureau’s recent reliance on blog posts, guidance, and even amicus brief filings to issue proclamations regarding the application of consumer financial protection laws is inappropriate and denies stakeholders the opportunity to participate in the statutorily mandated notice and comment process.

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

The Bureau prides itself on being a modern, data-driven regulator. Former Director Cordray often referred to the data 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. The Bureau has also refused, in certain instances, to publicly share the data upon which it relies to justify a rulemaking – in direct contravention to its obligations under the Administrative Procedure Act. 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, we have called for the Bureau's rule governing short-term, small dollar lending to be meaningfully tailored to address predatory payday lending while not inhibiting credit unions from offering responsible credit products to members in need. It is important that the CFPB strike an appropriate balance between its consumer protection mission and the availability of products and services. This balance is critical whether the product is a mortgage, credit card, or emergency loan. Many consumers rely on access to credit to manage their everyday finances and the Bureau should ensure reputable providers, especially community-based providers, are able to meet those needs.

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

Innovation, through technology and other creative solutions, has the potential to enhance the delivery and quality of financial products and services to consumers. In recent years, credit unions have been at the vanguard of innovation as a byproduct of their cooperative nature, member-driven focus, and relatively small size. Consumers benefit when financial institutions are provided with more opportunities, under the careful oversight of regulators, to pursue fresh answers to traditional questions. For this reason, CUNA and NAFCU support the CFPB's recent 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.

### Additional Issues of Concern for Credit Unions

#### Fees

The cooperative structure of credit unions ensures earnings – including fee income – are returned to members in the form of lower interest rates on loans, higher interest on deposits, and lower fees. In fact, credit unions exist only to serve their members, and the relationship between credit unions and their members is fundamentally stronger than the relationship other financial service providers have with their customers.

The CFPB and the Administration have repeatedly classified a broad range of ordinary fees in the consumer financial services market as so-called “junk fees” obscuring the true cost of financial services.<sup>1</sup> In the press release for this proposal, Director Chopra went so far as to say “[o]ver a decade ago, Congress banned excessive credit card late fees, but companies have exploited a regulatory loophole that has allowed them to escape scrutiny for charging an otherwise illegal junk fee.”<sup>2</sup> A legally established safe harbor is not a “regulatory loophole” and this government-wide effort to characterize all fees as “junk fees” appears to be little more than a convenient public relations tactic intended to divert the public’s attention away from the ever-increasing cost of everyday goods and services arising out of an environment of high inflation and other economic pressures. We strongly object to the government’s inflammatory messaging as it is intentionally misleading and clearly wrong-headed. To be clear, credit unions do not assess “junk fees.”

In multiple press releases, the CFPB has attempted to lump together fees levied in truly opaque markets outside of the Bureau’s jurisdiction with the clearly disclosed, heavily regulated financial institution fees that are incurred in direct response to specific actions (*i.e.*, a late payment). For example, in launching its junk fee initiative the Bureau highlighted that “hotels and concert

---

<sup>1</sup> See Consumer Financial Protection Bureau, Junk Fees Landing Page, available at <https://www.consumerfinance.gov/rules-policy/junk-fees/>. See also Consumer Financial Protection Bureau, Blog Post, The hidden cost of junk fees (Feb. 2, 2022), available at <https://www.consumerfinance.gov/about-us/blog/hidden-cost-junk-fees/>. See also Consumer Financial Protection Bureau, Blog Post, As Outstanding Credit Card Debt Hits New High, the CFPB is Focusing on Ways to Increase Competition and Reduce Costs (Apr. 17, 2023), available at <https://www.experian.com/blogs/ask-experian/can-my-credit-score-affect-renting/>. See White House (@whitehouse), Instagram, “The Biden-Harris Administration is taking action to get lots of these fees under control.” (the picture shows “Credit Card Late Fee \$31.00 in a list of other “junk fees” Mar. 3, 2023.)

<sup>2</sup> Press Release, Consumer Financial Protection Bureau, CFPB Proposes Rule to Rein in Excessive Credit Card Late Fees (Feb. 1, 2023), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-rein-in-excessive-credit-card-late-fees/>.

venues advertise rates, only to add ‘resort fees’ and ‘service fees’ after the fact.”<sup>3</sup> While that may be a true assessment of fees in the entertainment and leisure industries, the Bureau would do itself a service by focusing on the state of the consumer financial services market, where fees are clearly governed by robust disclosure requirements that prevent “surprise” fees after the fact.

It’s especially perplexing that the Bureau would choose to characterize nearly all fees as “hidden” when most of the rules governing bank and credit union fees are either promulgated or administered by the CFPB itself. In particular, Regulation Z specifically requires disclosures, at application or solicitation, outlining the amount of and circumstances resulting in fees for a consumer’s credit card account. Similarly, Regulation E requires disclosures, before account opening, of all fees associated with other consumer accounts. These regulations are actively administered by the Bureau, including the precise scope and timing of the disclosures. These two examples, while not nearly comprehensive, reveal the extensive network of legal protections created precisely to prevent these fees from being “hidden” from consumers, as the Bureau alleges.

America’s credit unions stand as the epitome of consumer protection in practice. As part of our member-owned structure, credit union members can rely on fair and equitable treatment by their credit union because they have a voice and a vote in its operation. This fairness extends to the level of fees charged in exchange for services or as a penalty.

#### *Regulating New and Emerging Service Providers*

Credit unions are increasingly concerned that unregulated providers are increasingly engaged in financial activities by offering products intended to be glossy, tech-savvy alternatives to traditional loan products. These non-financial institution providers often strive to offer these products without being subject to robust consumer protection laws and regulations in place for banks and credit unions. We believe there is value in the Bureau using its market monitoring authority to further explore these products and the companies that offer them as they begin serving a larger segment of consumers’ financing purchases. The Bureau has statutory authority to supervise nonbank covered persons that are “larger participants” in a market for financial products or services<sup>4</sup> and should continue to exercise that authority to ensure that American consumers are protected from under-supervised entities.

While credit unions welcome innovation in the market, we are concerned the exponential growth of alternative financial services products has outpaced prudent regulatory oversight and could ultimately result in consumer harm. In addition, the absence of effective oversight creates an uneven playing field to the material disadvantage of traditional lenders. Credit unions and other well-established financial service providers are heavily regulated for safety and soundness and consumer protection regulatory compliance. Congress and the CFPB should ensure consumer

---

<sup>3</sup> Press Release, Consumer Financial Protection Bureau, Consumer Financial Protection Bureau Launches Initiative to Save Americans Billions in Junk Fees (Jan. 26, 2022), *available at* <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-launches-initiative-to-save-americans-billions-in-junk-fees/>.

<sup>4</sup> See 12 U.S.C. 5514(a)(1)(b).

protections always run with a product or service, not with the entity providing the products or service.

### Credit Reporting

Before pursuing any changes to Regulation V, which implements the Fair Credit Reporting Act (FCRA), the Bureau should solicit a wide range of stakeholder input and be careful not to substitute its own intent for that of Congress when it originally passed the FCRA. The Bureau's recent efforts to overhaul credit reporting requirements<sup>5</sup> would grossly expand the scope of the Fair Credit Reporting Act without sufficient detail regarding the specific proposals the Bureau plans to evaluate, which did not provide small entity representatives participating in the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel with an opportunity to provide fulsome feedback, including cost estimates regarding the impact of the proposed changes. We have asked the Bureau to issue another outline of proposals and an advance notice of proposed rulemaking to provide more opportunity for stakeholders to review and comment on the ideas proposed. In the interest of promoting transparency and collecting comprehensive stakeholder feedback to inform rulemaking initiatives, the Bureau should always follow a consistent, data-driven information gathering and rulemaking process.

Credit unions strongly believe that an accurate credit reporting system benefits borrowers and lenders alike. Lenders rely on an accurate and complete record of a borrower's credit situation to make underwriting decisions. Legislative or regulatory actions intended to remove or modify certain types of debt from the credit reporting system will do long-term damage to lending and the ability of borrowers to get the loans they need to buy a home, start a small business, or achieve a higher education.

Blanket restrictions on the reporting or consideration of certain debt will prevent lenders from seeing borrowers' complete debt circumstances and cloud lenders' ability to fairly assess borrowers' creditworthiness. An incomplete view of borrowers' credit history reduces lender confidence in credit reports and scores, impacting pricing decisions and credit availability. The borrowers most impacted by the consequences of inaccurate credit reports will be low- and moderate-income borrowers whose financial well-being could benefit the most from access to affordable credit from a credit union.

### All-In Interest Rate Cap

CUNA and NAFCU strongly oppose proposals that would seek to establish a national "all-in" usury cap applicable to credit unions. Pursuant to the Federal Credit Union Act, federally chartered credit unions already comply with a usury cap administered by the National Credit Union Administration (NCUA or agency) Board. State chartered credit unions comply with the usury laws set by their respective jurisdictions.

---

<sup>5</sup> CFPB, Small Business Advisory Review Panel for Consumer Reporting Rulemaking Outline of Proposals and Alternatives Under Consideration (Sept. 15, 2023), [https://files.consumerfinance.gov/f/documents/cfpb\\_consumer-reporting-rule-sbreffa\\_outline-of-proposals.pdf](https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rule-sbreffa_outline-of-proposals.pdf).



Credit unions are often the safest and most affordable options for consumers in need of small dollar credit. In many cases, credit unions' small dollar loans are specifically designed to be a direct response to the harm caused by high-cost payday lenders and intended to put members back on the path to financial health. In fact, these products are often paired with other features intended to ensure the member is being set up to succeed, including – but not limited to – flexible repayment options, financial education resources, savings incentives, and credit counseling. We must caution Congress against establishing rigid restrictions on lending that reduce members' access to sensible loan options from local credit unions.

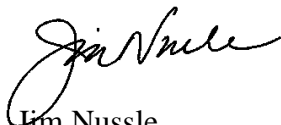
### Debt Collection

Credit unions urge caution with legislation that would expand the scope of the Fair Debt Collection Practices Act (FDCPA) to cover business loans. Such an expansion could potentially disrupt the management of commercial lending portfolios, increase the cost of and reduce access to credit for small business borrowers. The FDCPA is a significant consumer protection law, but Congress must consider further whether expanding this law to the commercial lending environment, with its specialized products and sophisticated borrowers, is appropriate.

### **Conclusion**

On behalf of America's credit unions and their more than 138 million members, thank you for holding this important hearing and considering our views.

Sincerely,



Jim Nussle  
President and CEO  
Credit Union National Association



Dan Berger  
President and CEO  
National Association of Federally-Insured Credit Unions