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The Honorable Maxine Waters  
Chairwoman  
Committee on Financial Services  
United States House of Representatives  
Washington, DC 20515

The Honorable Patrick McHenry  
Ranking Member  
Committee on Financial Services  
United States House of Representatives  
Washington, DC 20515

Dear Chairwoman Waters and Ranking Member McHenry,

On behalf of the Credit Union National Association (CUNA), I am writing regarding today's hearing, *Consumers First: Semi-Annual Report of the Consumer Financial Protection Bureau*. CUNA represents America's credit unions and their more than 130 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.

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 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.

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.<sup>1</sup> 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.<sup>2</sup> This sentiment reflects exactly the type of relationship banking that Director Rohit Chopra has stated he wanted to become commonplace in the consumer financial services markets.

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<sup>1</sup> 2022 CUNA National Voter Poll.

<sup>2</sup> *Id.*

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 . . . .<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 substantial authority in 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, 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**

Throughout its history, the Bureau has invited feedback from stakeholders on its rulemakings. 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 that are characteristic of for-profit financial service providers. While the CFPB may be aware 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 the pandemic clearly upended the Bureau’s ability to freely 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” 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 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. 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 supports 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.

Earlier this year, the CFPB issued a Request for Information (the RFI) on “fees that are not subject to a competitive process that ensures fair pricing.”<sup>3</sup> The release characterized a broad range of common fees in consumer services as so-called “junk fees” and alleged, without evidence, these fees are intended to obscure the true cost of financial services. We strongly objected to the release’s overtly politicized language and offered the following concerns with the Bureau’s blanket condemnation of all fees:

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<sup>3</sup> Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services, 87 Fed. Reg. 5801 (Feb. 2, 2022).

- Contrary to the Bureau’s claim, the financial services market is extremely competitive. Banks, credit unions and FinTech providers compete every single day, including on fees. To imply consumers are “captive” is simply untrue.
- All the fees highlighted in the RFI are subject to rigorous disclosure requirements pursuant to applicable statutes and implementing regulations, many of which are administered by the CFPB itself. The Bureau is well-aware of these requirements, so to claim that consumers are caught unaware of potential fees or that “true costs” are being “hidden” is misleading.
- Congress has not vested the CFPB with the authority to police “competitiveness,” as the RFI implies, nor can it establish usury limits or cap all fees. We cautioned the Bureau against exceeding its statutory authority.
- The harm to consumers could be significant should the Bureau move hastily to limit services without fully considering the alternatives available or the potential for unintended consequences.

While the RFI touched on many different fees, the CFPB levied substantial criticism at overdraft protection programs. However, in accordance with all relevant laws and regulations, a consumer that utilizes overdraft protection has affirmatively opted-in to the service as part of their account agreement. Credit unions offer overdraft as a convenience and accommodation to a members’ benefit, and members that choose to opt-in often do so for the peace-of-mind these services provide. And, in some cases, the opt-in decision was made precisely for the comfort of knowing that transactions would continue to be processed during an unexpected financial emergency or other cash shortfall. Credit unions strive to keep their members from turning to the unregulated financial services market to meet their liquidity needs. To that end, we caution policymakers against taking actions that are intended to severely limit the availability of overdraft programs from reputable, regulated financial institutions.

#### Small Business Data Collection

Section 1071 of the Dodd-Frank Act is intended to facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities for women-owned, minority-owned, and small businesses.<sup>4</sup> Credit unions support the goals of section 1071 and seek to provide all members with fair and equitable financial opportunities. That said, we are concerned about the potential for unintended consequences and substantial costs of compliance associated with the creation of a broad data collection where one does not currently exist. In addition, as entities bound to serve a specific field of membership, the data collected from credit unions would likely be incomparable to other lenders that are legally permitted to serve anyone walking through its doors or accessing its websites.

In developing its rule, the Bureau should keep in mind that credit unions are subject to strict requirements and rules for business lending as compared to for-profit financial institutions. While credit unions operate in every U.S. state and provide an array of financial services, not all credit unions provide business loans and the choice to do so is based on the regulatory environment and the individual credit unions’ membership. It is important for the Bureau to keep its rule as manageable and tailored as possible to avoid creating unintended barriers for small business borrowers seeking credit.

In the interest of effectively balancing consumer protection and the availability of credit for small businesses, we urged the Bureau to consider several revisions to the proposed rule, including but not limited to:

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<sup>4</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, section 1071, 124 Stat. 1376, 2056 (2010).

- Increasing the covered financial institution threshold to *at least* 500 covered credit transactions in each of the two preceding calendar years and also establishing an asset-based exemption for entities of \$600 million in assets or less;
- Reducing the gross annual revenue threshold used to determine which businesses are “small businesses” for purposes of the rule to no more than \$1 million in gross annual revenue in the preceding fiscal year; and
- Adopting a phased mandatory compliance schedule that begins no sooner than three years following the issuance of a final rule.

### 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.

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

### Credit Reporting

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 strongly opposes proposals that would seek to establish a national “all-in” usury cap. Pursuant to the Federal Credit Union Act, federally chartered credit unions 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.

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 130 million members, thank you for your consideration of our views and for holding this important hearing.

Sincerely,

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

Jim Nussle  
President & CEO