



National Association of Federal Credit Unions

The National Association of Federal Credit Unions

“Who’s In Your Wallet: Examining How Washington Red Tape Impairs Economic Freedom”

Statement for the Record

House Financial Services Committee

United States House of Representatives

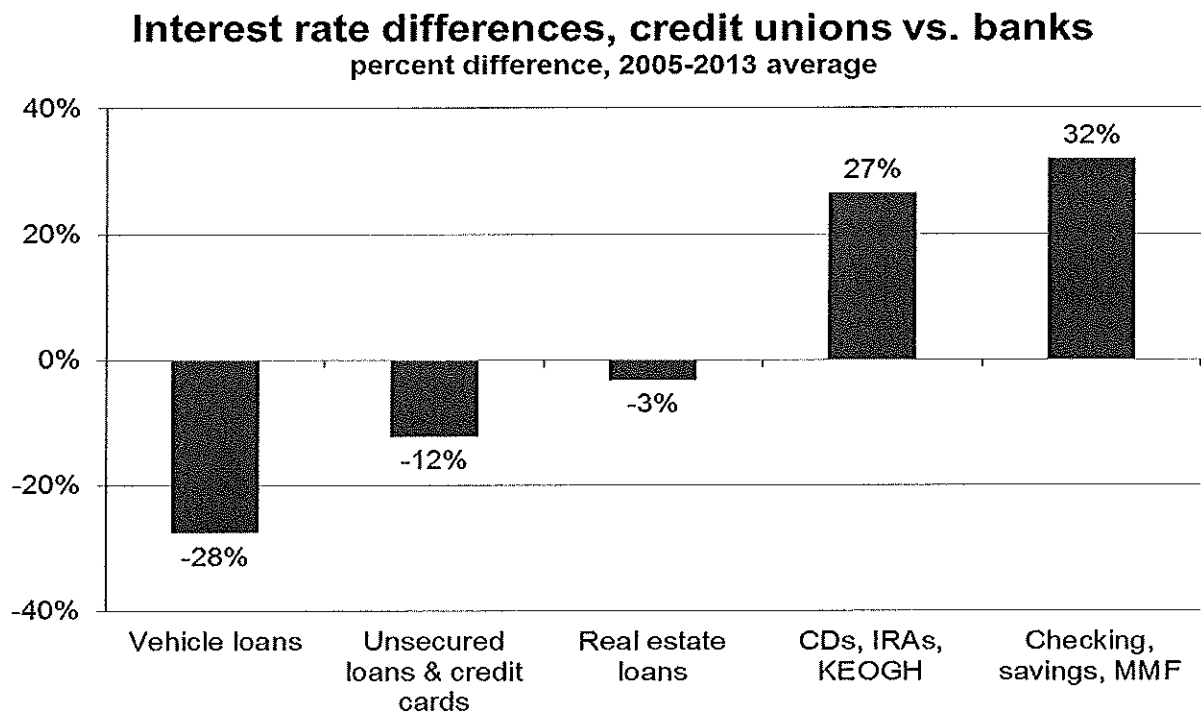
April 8, 2014

Chairman Hensarling, Ranking Member Waters and Members of the Committee, NAFCU, and the entire credit union community, thank you for this opportunity to submit this statement for the record for the Committee’s hearing: “Who’s In Your Wallet: Examining How Washington Red Tape Impairs Economic Freedom.”

I. Introduction: Increased Regulatory Burden on Credit Unions

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

Credit unions continue to play a crucial role in the recovery of our nation’s economy. Credit unions remain a relatively small part of the marketplace when compared to the banking industry. They are oftentimes a lender of last resort for consumers that have been denied credit via other financial institutions. As detailed in the chart below, on average from 2005-2013, credit unions consistently outperformed banks with lower interest rates on loans and higher returns on savings and deposits.



Today, credit union lending continues to grow at a solid pace, up about 6.8% at the end up 2013 compared to 2009. In short, credit unions didn’t cause the financial crisis, helped blunt the crisis by continuing to lend during difficult times, and perhaps most importantly, continue to play a key role in the still fragile economic recovery. While credit unions continue to focus on their members, the increasing complexity of the regulatory environment is taking a toll on the credit

union industry. While NAFCU and its member credit unions take safety and soundness extremely seriously, the regulatory pendulum post crisis has swung too far towards an environment of overregulation that threatens to stifle economic growth. As that National Credit Union Administration (NCUA) and the Consumer Financial Protection Bureau (CFPB) work to prevent the next financial crisis, even the most well intended regulations have the potential to regulate our industry out of business.

During the consideration of financial reform, NAFCU was concerned about the possibility of overregulation of good actors such as credit unions, and this was why NAFCU was the only credit union trade association to oppose the CFPB having rulemaking authority over credit unions. Unfortunately, many of our concerns, about the increased regulatory burdens that credit unions would face under the CFPB, have proven true. While there are credible arguments to be made for the existence of a CFPB, its primary focus should be on regulating the unregulated bad actors, not adding new regulatory burdens to good actors like credit unions that already fall under a functional regulator. As expected, the breadth and pace of CFPB rulemaking is troublesome, and the unprecedented new compliance burden placed on credit unions has been immense.

The impact of this growing compliance burden is evident as the number of financial institutions continues to decline, dropping by 19.7% (more than 3,200) institutions since 2007. This trend rings true for credit unions as well, and a main reason for the decline is the increasing cost and complexity of complying with the ever-increasing onslaught of regulations. Many smaller institutions simply cannot keep up with the new regulatory tide and have to merge out of business or be taken over.

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

II. NAFCU on Regulatory Burden: Legislative and Regulatory Action Needed

Credit unions didn't cause the financial crisis and shouldn't be caught in the crosshairs of regulations aimed at those entities that did. Unfortunately, that has not been the case thus far. In the wake of the *Dodd-Frank Act*, it became clear that increased regulatory burden at credit unions would forever change the compliance landscape of the entire industry. Finding ways to cut-down on burdensome and unnecessary regulatory compliance costs is the only way for credit unions to thrive and continue to provide their member-owners with basic financial services and the exemplary service they need and deserve. It is also a top goal of NAFCU.

Ongoing discussions with NAFCU member credit unions led to the unveiling of NAFCU's "Five Point Plan for Regulatory Relief" [attachment A] in February 2013, and a call for Congress to enact meaningful legislative reforms that would provide much needed assistance to our nation's credit unions. The "Five Point Plan" covers key areas for credit unions including: Administrative Improvements for the Powers of the NCUA; Capital Reforms for Credit Unions; Structural Improvements for Credit Unions; Operational Improvements for Credit Unions; and, 21st Century Standards for Data Security.

Recognizing that there are a number of outdated regulations and requirements that no longer make sense and need to be modernized or eliminated, NAFCU also compiled and released a document entitled "NAFCU'S Dirty Dozen" [attachment B] in December 2013, that outlines twelve key regulatory issues credit unions face that should be eliminated or amended. The "Dirty Dozen" includes expanding credit union investment authority; updating NCUA's fixed assets rules; improving the process for credit unions seeking changes to their field of membership; increasing the number of transactions allowed to be made per month from savings accounts per the Federal Reserve Regulation D; providing flexibility for credit unions that offer member business loans; updating requirements to disclose account numbers to protect privacy of credit union members; updating advertisement requirements for loans products and share accounts; modernizing NCUA advertising requirements; making improvements to the Central Liquidity Fund; providing flexibility for federal credit unions to operate under state law in certain circumstances; simplifying regulations governing check processing and funds availability; and, eliminating redundant NCUA requirements to provide copies of appraisals upon request.

Our "Five Point Plan" and "Dirty Dozen" outline a number of areas where credit unions need action and we urge the Committee to review these documents. In our statement today, we highlight a number of key issues where regulatory burdens and proposals are posing immediate threats to the ability of credit unions to serve their members and give them the financial products that they want.

III. NCUA's Risk-Based Capital Rule: A Solution in Search of a Problem

On January 23, 2014, the National Credit Union Administration released a proposed "risk-based" capital rule that makes great changes with respect to Prompt Corrective Act (PCA) including replacement of the agency's current risk-based net worth (RBNW) requirements with new requirements for federally insured credit unions over \$50 million in assets. While NAFCU is supportive of a risk-based capital regime for credit unions, we do not believe that the NCUA proposal as it currently stands is appropriate. If it were to be implemented as proposed, credit unions could find themselves at a competitive disadvantage to banks.

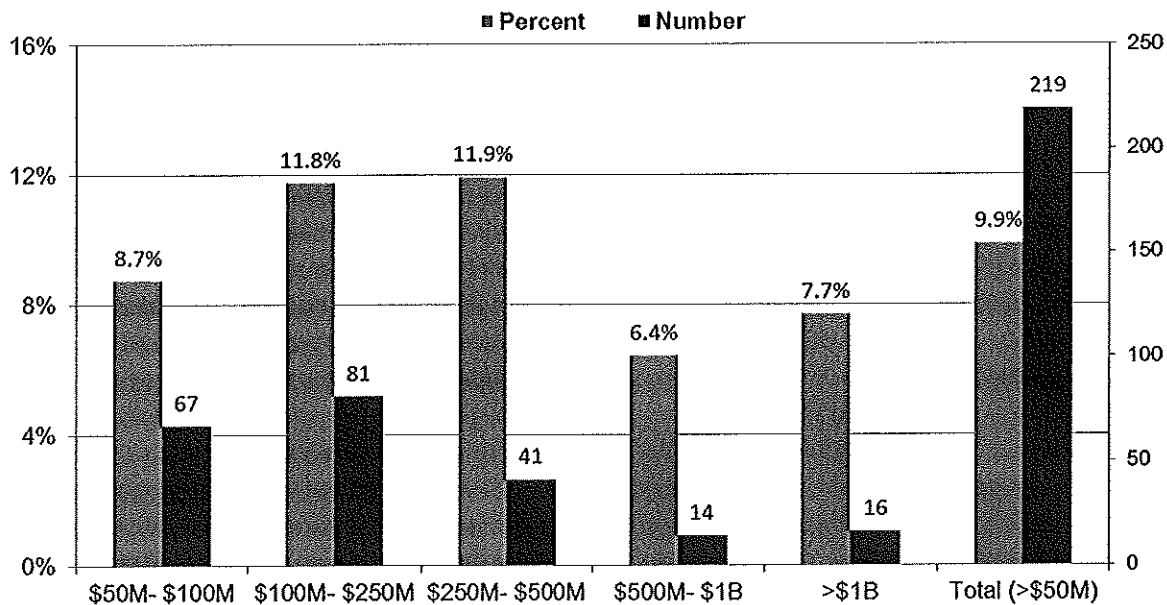
As proposed, the rule is one-size-fits-all and would serve to stifle growth, innovation and diversification at credit unions. Addressing the NCUA's proposed rule is NAFCU's chief regulatory issue right now, and will quickly become NAFCU's top legislative issue should the NCUA fail to make substantial changes to the rule before it is made final.

In summary, the proposed rule would:

- Amend Part 702 of NCUA regulations regarding PCA to make various revisions, including replacing the agency’s current RBNW requirements with new risk-based capital requirements for federally insured “natural person” credit unions.
- Revise the risk-weights for many of NCUA’s current asset classifications and require higher minimum levels of capital for federally insured natural person credit unions with concentrations of assets in real estate loans, member business loans (MBLs) or higher levels of delinquent loans.
- Set forth a process where NCUA could require an individual federally insured natural person credit union to hold higher levels of risk-based capital based on supervisory concerns raised through the NCUA examination process.

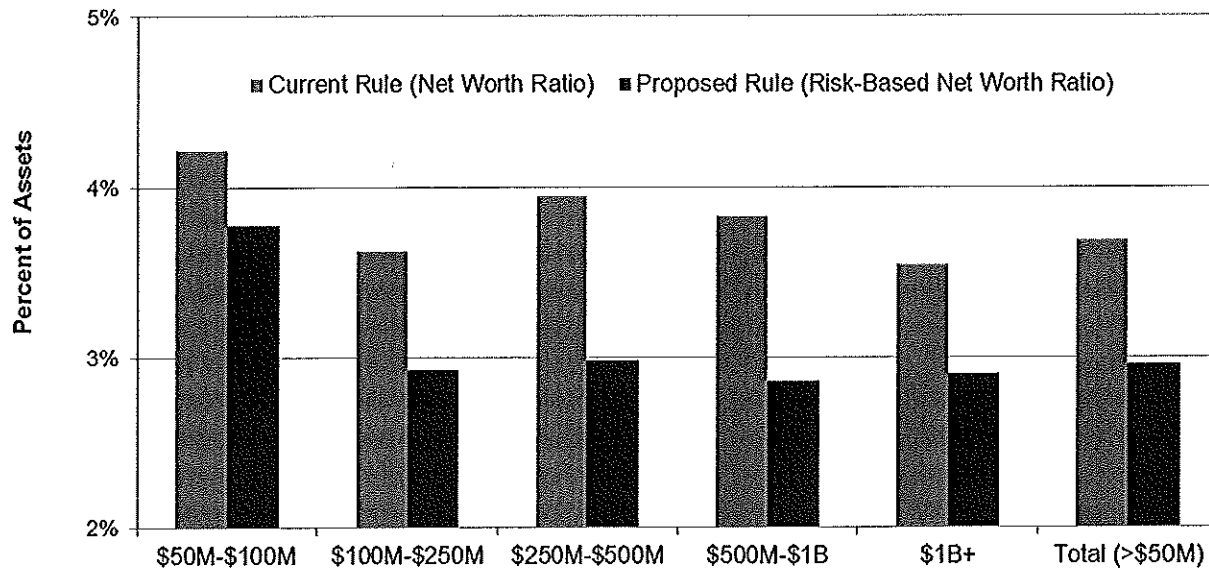
NAFCU’s Economics and Research department prepared the impact analysis graphs found below that outline the impact the proposal would have on credit unions based on their asset size. Our analysis of the proposed rule determined that credit unions with more than \$50 million in assets will have to hold \$6.7 billion more in additional reserves to achieve the same capital cushion they currently maintain. Because credit unions cannot raise capital from the open market like other financial institutions, this cost will undoubtedly be passed on to the 97 million credit union members across the country. A survey of NAFCU’s membership taken last month found that nearly 60% of respondents believe the proposed rule would force their credit union to hold more capital, while nearly 65% believe this proposal would force them to realign their balance sheet. Simply put, if the NCUA implements this rule as proposed, credit unions will have less capital to loan to credit worthy borrowers, whether for a mortgage, auto, or business loan.

Credit Unions Downgraded in RBNW Proposal



Capital cushion by asset class

Difference between actual and threshold required to be well capitalized



The next sections will highlight our particular areas of concern with the proposal and what Congress may be able to do to help.

A. Problematic Risk-Weighting in NCUA's Risk-Based Capital Proposal

The proposed rule revises the risk-weights for many of NCUA's current asset classifications and requires higher minimum levels of capital for credit unions that are perceived as having more risky portfolios. NAFCU and its member credit unions have identified several key areas where risk-weighting in the proposal does not accurately capture the risks associated with the asset in question. In particular, a number of the NCUA proposed risk weights go farther than the FDIC and Basel III requirements for community banks – often without solid justification as to why.

Non-Delinquent First Mortgage Real Estate Loans

The proposed rule uses the non-delinquent first mortgage real estate loans risk-weights to compensate for concentration risk. This is apparent in the proposed risk-weights for non-delinquent first mortgage real estate loans which increase to correspond with the percentage of those assets held by the credit union in their portfolio. Non-delinquent first mortgage real estate loans start at a 50% risk-weight for those loans that represent less than 25% of a credit union's assets, then jumps to 75% for those from 25-35% of assets, and finally goes all the way to 100% for those that comprise more than 35% of the assets of the credit union's portfolio. Of note, the FDIC weights non-delinquent first mortgage real estate loans at 50% regardless of the concentration in the portfolio.

The risk-weights do not take in to consideration any factors that could indicate that the loans are more or less likely to default, including the loan-to-value ratio of loans or credit scores of members who get the loans. These factors should be used to lower the amount of capital required to be held for loans that are safer than others.

One alternative would be for NCUA to eliminate one of the buckets from the proposed rule and adjust the risk-weights to more accurately reflect the risk involved with non-delinquent first mortgage real estate loans. This result would benefit the capital cushion for credit unions at every asset level size compared to the proposed rule, and it would still allow NCUA to control for concentration risk by requiring credit unions to hold more capital if they hold heavy concentrations of real estate loans without straying far from the FDIC risk-weighting.

Investments

The proposed rule uses the investment risk-weights to compensate for interest rate risk. This is apparent in the differences in proposed risk-weights for investments based on the maturity levels of those investments. For investments with a maturity of 0-1 years the proposed risk-weight is 20%. For those with 1-3 year maturities the proposed risk-weight is 50%. It jumps again to 75% for those with 3-5 year maturities and up to 150% for investments with maturities from 5-10 years. If a credit union has an investment with a maturity over 10 years, under the proposed rule, it will have a 200% risk-weight. This is based primarily upon the 300 basis point interest rate shock used by the FDIC. This means NCUA selected the increments for the investment weight scale to match the loss that would take place due to a 300 basis point interest rate shock. For example, if rates increased by 300 basis points, an investment with a 2-year maturity would decline in value by approximately 5%. Since the threshold for a well-capitalized credit union is 10.5%, the weight should be around 50% in order to have an offsetting amount of capital to cover the loss under a 300 basis point shock.

For those investments that credit unions are permitted to make, the FDIC does not incorporate interest rate risk into the investment risk-weights for community banks. Instead, it generally weighs the investments that credit unions can do with a single risk-weight regardless of maturity. FDIC considers steps institutions take to mitigate interest rate risk in its capital requirements. However, NCUA's proposal does not account for any mitigation efforts, such as variable-rate assets or derivatives, which would offset some exposure for credit unions to interest rate risk.

In any final rule, NCUA needs to include a way to factor in the interest rate risk mitigation being done by credit unions. Credit unions already monitor and control for interest rate risk through their own policies and in accordance with NCUA examination and supervision. It is not necessary for a risk-based capital regime to perform this function. If the NCUA does keep interest rate risk built into investment risk-weights, that system should not penalize short or medium term investments.

Member Business Loans

NCUA factored concentration risk into the proposed risk-weighting for MBLs by setting the risk-weights to correspond with the percent of assets in MBLs held by the credit union. This means that every MBL up to 15% of assets for a credit union would be weighted at 100%. Those

MBL assets between 15% and 25% have a risk-weight of 150% and the risk-weights for those MBLs over 25% are 200%.

In the event that NCUA does not reconsider eliminating the concentration risk component of the MBL risk-weights, credit unions chartered historically for business loan purposes should be given a different set of risk-weights that doesn't require them to abandon their core mission for their membership. Those credit unions chartered historically for business loan purposes should be given a risk-weight of 100% for their business loan portfolio. The risks to the portfolios of these special credit unions, including concentration risk, should be managed through the examination and supervision process, not through these capital risk-weights.

Credit unions with proven minimal losses in business lending should be given credit for their diversified portfolios and proven underwriting standards. Risk-weights should also be broken down for types of loans such as agricultural MBLs or commercial real estate MBLs and given appropriate risk-weights based on their actual risk.

Credit Union Service Organizations

The proposal would set the risk-weight at 250% for investments in credit union service organizations (CUSOs) and 100 percent for loans to a CUSO. NAFCU believes the proposed rule does not adequately explain this difference. This suggests that loans to CUSOs are 2.5 times safer than investments in CUSOs.

Investments in CUSOs should be assigned a risk-weight of 100% to align it with loans to a CUSO and more accurately reflect the risk involved with investing in a CUSO. The overwhelming majority of CUSOs are performing very well, generating considerable savings through economies of scale and providing much needed non-interest income to their credit union owners. Less than 22 basis points of credit union assets are invested in CUSOs and don't represent a systematic risk that could have a significant impact on the National Credit Union Share Insurance Fund (NCUSIF), but this proposed rule could force credit unions to reconsider investments in CUSOs now and in the future.

The chart on the following page is a break-down of risk-weighting at the FDIC (under Basel III) compared to the proposed risk-weighting in the NCUA highlighting areas that will be especially problematic for our nation's credit unions.

Risk Weights: NCUA vs. FDIC

| | Category | Sub-Category | NCUA proposal | FDIC weights | |
|----------------------------------|---|---|---------------|--------------|------|
| Numerator | Liabilities | | 1 | 1 | |
| | Equity | | 1 | 1 | |
| | Contra Assets | | 1 | 1 | |
| | Other Assets | Goodwill | | -1 | -1 |
| | | Identifiable intangible assets | | -1 | -1 |
| | | NCUSIF | | -1 | |
| | Cash | | 0 | 0 | |
| | Investments* | 0-1 Year | | 0.2 | 0.2 |
| | | 1-3 Years | | 0.5 | 0.2 |
| | | 3-5 Years | | 0.75 | 0.2 |
| 5-10 Years | | | 1.5 | 0.2 | |
| >10 Years | | | 2 | 0.2 | |
| Corporate CU Member Capital | | | 1 | | |
| Corporate Paid-in Capital | | | 2 | | |
| Denominator | Real Estate Loans | Nondelinquent 1st mort R/E loans (excl. MBLs) | | | |
| | | <25% of assets | 0.5 | 0.5 | |
| | | 25-35% of Assets | 0.75 | 0.5 | |
| | | >35% of Assets | 1 | 0.5 | |
| | | Other R/E and delinquent R/E | | | |
| | | <10% of Assets | 1 | 1 | |
| | 10-20% of Assets | 1.25 | 1 | | |
| | >20% of Assets | 1.5 | 1 | | |
| | Other Loans | Nondelinquent student loans | | 1 | 1 |
| | | Nondelinquent other loans | | 0.75 | 1 |
| | | Delinquent other loans | | 1.5 | 1.5 |
| | | SBA | | -0.8 | -0.8 |
| | | Member business loans | | | |
| | | <15% of Assets | 1 | 1 | |
| | 15-25% of Assets | 1.5 | 1 | | |
| | >25% of Assets | 2 | 1 | | |
| | Other Assets | Goodwill | | -1 | -1 |
| | | Identifiable intangible assets | | -1 | -1 |
| | | NCUSIF | | -1 | |
| | | Inv't in CUSO | | 2.5 | |
| Mort servicing rights | | | 2.5 | 2.5 | |
| All other assets | | | 1 | 1 | |
| Off Bal Sheet | Loans with recourse | | 0.75 | | |
| | Unfunded commitments bus loans (75% conversion) | | 1 | 1 | |
| | Unfunded commitments non-bus loans (10% conversion) | | 0.75 | 1 | |
| Capitalization thresholds | | | | | |
| | Well Capitalized | | 10.5% | 10.0% | |
| | Adequately Capitalized | | 8.0% | 8.0% | |

* U.S. Treasuries and other direct and unconditional claims on the U.S. government are weighted at 0 by both NCUA and FDIC. Most other credit union investments are weighted from .2 to 2 according to their maturity. They would generally be rated at a constant 0.2 under the FDIC rule.

B. Additional Key Concerns with the NCUA's Risk-Based Capital Proposal

In addition to problematic risk-weighting and inadequate details with respect to how the weighting was derived for many of the asset classes, NAFCU has several other key concerns with the NCUA's risk based capital proposal.

Individual Minimum Capital Requirement

The proposed rule provides NCUA the ability to require a higher minimum risk-based capital ratio for an individual credit union in any case where NCUA determines that the circumstances, such as the level of risk of a particular investment portfolio, the risk management systems, or other information, indicate that a higher minimum risk-based capital requirement is appropriate. This means that NCUA may establish increased individual minimum capital requirements upon its determination that the credit union's capital is or may become inadequate in light of the credit union's circumstances regardless of the actual risk-based capital ratio of the credit union.

In other words, NCUA can increase a credit union's individual risk-based capital requirement by subjective action through the examination process or "supervisory assessment" based on the determination that the credit union needs additional capital based on the credit union's balance sheet risk. A survey of NAFCU's membership taken last month found that over 65% of respondents have serious concerns over this portion of the rule.

NAFCU believes there are serious concerns about the legal authority of NCUA to enact this portion of the rule. Outside of the ability of the NCUA Board to institute individual minimum capital requirements in the first place, there are also questions surrounding whether that authority can be delegated by the Board to anyone, such as an examiner.

In addition to potential legal issues, this portion of the proposal seems to undermine the stated purpose of the rule. On the one hand, credit unions are led to believe that the proposal is designed to factor in a number of different risks. On the other hand, if the risk-based capital ratios laid out in the proposal don't result in the numbers the regulator wants to see, the NCUA can change the rules for an individual credit union. This makes it nearly impossible for credit unions to make a sound business decision about the makeup of their portfolio and will lead to even more uncertainty for credit unions and their members.

Implementation Time-Frame

The proposed rule has an implementation time period of 18 months after the passage of a final rule and its publication in the *Federal Register*. NAFCU believes, given the sweeping changes in the proposal, that the time frame is entirely too short. It will take time for credit unions to adjust their balance sheets related to this new regulation. That doesn't include the changes that need to be made to internal systems and operations well in advance of the effective date.

NAFCU believes any implementation period should be no less than three years after passage of any final rule. Credit unions will need at least that long to make safe and sound decisions about potential fundamental changes to their core business decisions including investments and product offerings.

Reputational Risk

It is also worth noting that upon release of the risk-based capital proposal, the NCUA publicly posted an online calculator that allows credit unions to view what their risk-based capital ratio under the proposed rule would be. While NAFCU supported the intent to make it easy for credit unions to gauge the rule's impact on their balance sheets, the existence of the calculator in a public forum has the potential to raise reputation risk issues. NCUA has now indicated that the calculator will be removed at the end of the comment period. Due to the ease of information dissemination with current technology, how data is presented, and how it impacts our members, is a key concern for NAFCU.

C. NCUA's Risk-Based Capital Proposal: How Congress Can Help

At this stage in the rule-making process, rigorous Congressional oversight is critical in ensuring the NCUA's risk-based capital proposal does not inhibit the ability of consumers to access the basic financial services and competitive rates credit unions often provide. Today's hearing is an appropriate setting for the NCUA to provide additional information about the proposed rule, including the metrics used to determine what asset classifications needed revision, and a justification for the revised weighting associated with each individual asset class. As outlined above, NAFCU believes that there should be strong scrutiny applied to the requirement of higher minimum levels of capital for credit unions with concentrations of assets in real estate loans, member business loans, or higher levels of delinquent loans in an attempt to factor in concentration risk. These higher requirements could have a chilling effect on credit union lending going forward, as credit unions would have to hold more capital just to make loans, which, in turn, could end up harming the American consumer and the still fragile American economy.

As the credit union community begins to comment to NCUA on this rule, NAFCU is hopeful that the NCUA Board will realize the devastating effect that this proposal will have on the credit union industry, the American consumer, and our nation's small businesses. While we are supportive of the idea of a risk-based capital regime for credit unions, the current NCUA proposal got it wrong. We hope that they will ultimately withdraw or make major modifications to their proposal before it goes into effect. As you may know, the open comment period is scheduled to close on May 28, 2014.

Should NCUA's proposal go forward with little or no changes, the new rule would precipitate the need for Congressional action on proposals to bring about capital changes for credit unions such as H.R. 719, the *Capital Access for Small Businesses and Jobs Act*, which would allow credit unions to have access to supplemental capital sources. In addition this would prompt the need for statutory changes necessary to design a true risk-based capital system for credit unions. Lastly, a final rule mirroring the proposal in terms of an individual credit union's risk-based capital requirements being changed through the exam process only reinforces the need for action on H.R. 1553, the *Financial Institutions Examination Fairness and Reform Act*. NAFCU looks forward to continuing to work with Congress on this timely issue.

IV. Other Regulatory Issues at the National Credit Union Administration

There are a number of other issues which impact credit unions and that NAFCU has weighed in with the NCUA about. We stand ready to work with the agency to address our concerns, but we also raise them today so that Congress may provide oversight in these areas and stand ready to act if needed.

Budget Transparency

As the agency charged by Congress to regulate, charter, and supervise federal credit unions, NCUA oversees and manages the National Credit Union Share Insurance Fund (NCUSIF), the Temporary Corporate Credit Union Stabilization Fund (TCCUSIF), the Central Liquidity Fund (CLF), and its annual operating budget. These funds are comprised of monies paid by credit unions. NCUA is charged with protecting these funds and using its operating budget to advance the safety and soundness of credit unions.

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

Field of Membership Issues

NAFCU believes reasonable improvements to current field-of-membership restrictions include: (1) streamlining the process for converting from one charter type to another; (2) removing or greatly increasing the current population limits for serving members in a metropolitan area (1 million) and contiguous political jurisdictions (500,000); and, (3) making it easier for all credit unions to add "underserved" areas within their field of membership.

Member Business Lending (MBL) Flexibility

Additional flexibility is needed for credit unions that offer member business loans. In particular, NAFCU urges Congressional action on the bipartisan *Credit Union Small Business Jobs Creation Act*, H.R. 688, which would raise the arbitrary and outdated MBL cap on credit unions. We also urge Congressional action on the *Credit Union Residential Loan Parity Act*, H.R. 4226, which would exclude loans made non-owner occupied 1- to 4-family dwelling from the definition of a member business loan. In the meantime, NAFCU has suggested improvements to the NCUA's regulations regarding member business lending including: (1) securing credit union-friendly changes to the waiver process; (2) increasing the general minimum loan-to-value ratio from 80% to 85%; and, (3) securing removal of the 5 year relationship requirement.

NCUA Advertising

In an attempt to keep up with ever changing technology, NAFCU believes the NCUA should update credit union advertising requirements to clarify that the official NCUA share insurance logo is not required to be displayed on (1) mobile applications, (2) social media, and (3) virtual tellers.

V. Ongoing Examination Issues at the NCUA

Credit unions now face more examiner scrutiny than ever, as the examination cycles for credit unions have gone from 18 months to 12 months since the onset of the financial crisis even though credit union financial conditions continue to improve. Additional exams mean additional staff time and resources to prepare and respond to examiner needs.

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

Exam Modernization

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

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

Consistency

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

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

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

done to ensure that all examiners treat both regulations and guidance consistently and for the purpose each was issued.

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

Examination Notification

NAFCU appreciates NCUA's efforts on several fronts to improve transparency and clarity for examiners and credit unions. One suggestion that NAFCU has made that would help both credit unions as well as examiners, is to extend the notification to a credit union of upcoming examinations and supervisory contacts where applicable.

NAFCU shares NCUA's goal of having a strong and safe credit union system. With that in mind, we are not advocating for elimination of surprise exams when the Examiner-in-Charge sees fit for institutions with weak internal controls. We are asking that like the FDIC, the NCUA also require examiners to contact credit unions two months prior to routine exams in order to minimize disruptions to credit unions and to help facilitate efficient examinations.

Examination Appeal Process

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

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

The appeal process has a number of inherent flaws, not the least of which is the exclusion (in most instances) of a review by an independent third party at any level of the process. Under these circumstances it is almost impossible to avoid conflicts of interest and approach each situation objectively.

Again, NAFCU believes that the bipartisan *Financial Institutions Examination Fairness and Reform Act* (H.R. 1553) is a positive first step in improving the examination process and

supports the legislation. Introducing an independent third party to the appeal process will ensure that consistent standards are applied and will help bring more certainty to the examination process.

VI. Other Business Pending at the National Credit Union Administration

In addition to the issues outlined above, there are several key issues currently being reviewed by the agency that NAFCU is following for their potential impact on credit unions.

Examination Sites

In addition to the exam concerns detailed earlier, it's also worth noting that in December 2013, the NCUA proposed rulemaking regarding requirements for contacts with federal credit unions. While NAFCU agrees that the NCUA needs to address important issues such as the need for responsive communication and employee safety, the proposal goes too far in requiring credit unions to obtain and maintain commercial office space during exams. NAFCU believes this is an issue of fairness, and that the NCUA should move examination sites to public locations if office space at the credit union is not available. A final rule on this issue is expected in the coming months amid continued concerns that it could put some smaller credit unions out of business.

Stress Testing

In October 2013, NCUA released a proposed rule that would require annual stress testing for credit unions with more than \$10 billion in assets. In addition, the proposed rule would require such credit unions to submit, on an annual basis, capital plans with certain mandatory elements and analyses. At a minimum, a credit union subject to the proposed rule would be required to conduct a sensitivity analysis to evaluate the effect on capital of changes in variables, parameters and inputs used by the credit union in its capital plans. It would also have to test the impact of interest rate shocks of at least +/- 300 basis points on the net economic value of the credit union, using final maturities of non-maturity shares not exceeding two years. These credit unions must also analyze the impact of credit risk to capital under unfavorable conditions, both separately and in combination with unfavorable interest scenarios. The proposal aims to advance regulatory parity with the banking regulators. However, the parameters NCUA has prescribed have imposed more stringent requirements on credit unions than those imposed on banks. As such, NAFCU has suggested changes to the rule, especially since credit unions already do their own stress testing.

NAFCU is concerned that additional NCUA stress testing and oversight would only create greater cost and burden to the entire credit union industry.

VII. Regulatory Issues at the Consumer Financial Protection Bureau (CFPB)

In addition to regulations from the NCUA, all credit unions are subject to the rulemaking of the CFPB. The tidal wave of new regulations coming from the Bureau, even if they are well-intentioned, has proven to be overwhelming to credit unions, as they are often forced to comply with the exact same rules as our nation's mega banks, and their armies of lawyers. The CFPB

has done a good job in soliciting feedback and input from credit unions during their rulemaking processes. However, many of their rules have fallen short of addressing the concerns expressed by credit unions during the process. We hope to work with the Bureau to address these concerns going forward. Still, there are a number of areas where CFPB rules have had dramatic impact on credit unions and their ability to serve their 97 million members.

A. Remittances

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

In February 2012, the CFPB issued its first set of final rules on remittances. These rules required, among other things, remittance service providers, including credit unions, to provide a pre-payment disclosure to a sender containing detailed information about the transfer requested by the sender, and a written receipt on completion of the payment. Following the release of the February 2012, final rule, the CFPB issued on August 20, 2012, a supplemental final that provided a safe harbor for determining whether a credit union is subject to the remittance transfer regulations. Specifically, a credit union that conducts 100 or fewer remittances in the previous and current calendar years would not be subject to the rules.

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

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

NAFCU continues to raise concerns that the regulatory burden imposed by the final rule leads to a significant reduction in consumers' access to remittance transfer services. NAFCU has heard from a number of its members that, because of the final rule's enormous compliance burden, they have been forced to discontinue, or will be forced to discontinue, their remittance programs. A 2013, NAFCU survey of our members found that over one-quarter of those that offered remittance services before the rule have now stopped offering that service to members and even

more are considering dropping. Those that continue to offer remittances have been forced to significantly increase their members' fees. NAFCU encourages the CFPB to expand the threshold for the safe harbor from the definition of "remittance transfer provider" in order to ensure that a meaningful safe harbor is established.

B. HMDA Changes Going Beyond the *Dodd-Frank Act*

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

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

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

C. TILA/RESPA

Dodd-Frank directed the CFPB to combine the mortgage disclosures under the *Truth in Lending Act* and *Real Estate Settlement Procedures Act*. Under this mandate, the Bureau, in November 2013, released the integrated disclosures rule. This 1900-page rule requires a complete overhaul of the systems, disclosures, and processes currently in place for a consumer to obtain a mortgage. For example, the rule mandates the use of two disclosures: the three-page Loan Estimate (which replaces the Good Faith Estimate and initial Truth in Lending Disclosure); and the five-page Closing Disclosure (which replaces the HUD-1 and final Truth in Lending disclosure). There are also a number of stringent timing requirements and other substantive changes lenders must follow. The rule is effective August 2015, but lenders are still feeling pressure to be compliant

on time. The sheer magnitude of this rule, read in conjunction with the totality of the other mortgage rules, has created a very burdensome regulatory environment and many credit unions are finding it difficult to continue lending. Credit unions must comply with the current disclosure requirements, which are extensive, and they must prepare their compliance solutions for the upcoming ones effective in August 2015, further exacerbating costs.

D. Qualified Mortgages

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

Points and Fees

NAFCU strongly supports bipartisan legislation in both the Senate and House to alter the definition of “points and fees” under the “ability-to-repay” rule. NAFCU has taken advantage of every opportunity available to educate and discuss with the CFPB on aspects of the ability-to-repay rule that are likely to be problematic for credit unions and their members. While credit unions understand the intention of the rule and importance of hindering unscrupulous mortgage lenders from entering the marketplace, it is time for Congress to address unfair and unnecessarily restrictive aspects of this CFPB rule.

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

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

Loans Held in Portfolio

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

40-year Loan Product

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

Debt-to-Income Ratio

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

E. Prepaid Card Issues

The CFPB is likely to issue a proposed rule on prepaid cards in June. That proposed rule will explore bringing prepaid cards under Regulation E. Credit unions have a number of unique issues that need to be taken into consideration when dealing with prepaid cards.

NAFCU is concerned that the CFPB may treat prepaid card products in the same fashion that checking and savings accounts are currently treated. On the surface, there are obvious similarities between prepaid cards and debit cards; however, these products are functionally quite different. The law, regulations, back room operations and internal processes and procedures for offering checking accounts and prepaid cards are not identical, or even similar. They should not be pigeon-holed into a regulatory and operational structure designed for checking and savings account products.

Linked Savings Accounts

NAFCU cautions against any regulatory efforts to require institutions to offer any sort of linked savings account with a general purpose reloadable gift card. Such a measure might have the unintended consequence of driving providers from the market. Smaller institutions will particularly have difficulties implementing such requirements. While such a feature may be suitable for some consumers, it is worth noting that many consumers use prepaid cards because they do not want, or feel they do not need, a checking or savings account. Institutions should be free to establish these sorts of linked accounts according to their business judgment.

Share Insurance Fund

Credit union deposits are insured by the National Credit Union Share Insurance Fund (NCUSIF). There needs to be clear interpretation about whether any regulation for general purpose reloadable prepaid cards would require the underlying funds to be covered by share insurance, which potentially would require changes to the *Federal Credit Union Act*.

Any rules or laws that deal with prepaid cards also need to ensure that any potential rules on deposit or share insurance for prepaid cards are consistent with NCUA’s rules and regulations, especially with regard to share insurance and pooled accounts, so credit unions can continue to provide prepaid cards.

F. Overdraft Protection

As a preliminary matter, NAFCU and its members believe that overdraft protection is a useful service that provides value to consumers. Overdraft programs have evolved to fit consumers’

wants and needs. For example, defense credit unions tailor their programs in a number of different ways in order to better serve the needs of their unique membership. For some time, credit unions have not used a one size fits all approach to overdraft protection.

NAFCU strongly supports, as part of any overdraft protection program, strong disclosures to make sure consumers are informed of the details of the program. While overdraft programs vary from credit union to credit union, there are some common characteristics that are true of most credit union overdraft programs. Many credit unions treat overdraft protection in a manner similar to loan underwriting; allowing members to qualify for overdraft protection only after checking the credit history and past performance on checking accounts. Credit unions also generally monitor their members' activity to ensure that the service is not being abused. Mark Colley, the President and CEO of Tulsa Postal & Community Federal Credit Union testified on behalf of NAFCU in 2009 on legislation regarding overdraft protection. Mr. Colley's credit union is located near several casinos and he testified that his credit union shuts off its courtesy pay service if it is discovered that the service is being abused at casinos. Many credit unions similarly track overdraft fees, work with members who use the service excessively and provide education on ways to better manage their finances.

While NAFCU understands that the CFPB plans to examine this service further, we are hopeful that the Bureau will take time to carefully consider the myriad of different ways that institutions provide overdraft protection. The CFPB should ensure that new regulations do not make it more difficult for credit unions to continue offering responsible, cost-effective overdraft programs that serve their members.

Credit unions often provide alternatives to traditional overdraft protection services. The most common alternative is linking the checking account to the consumer's savings account. Additionally, the majority of credit unions offer a line of credit that automatically transfers funds to the checking account in the event of an overdraft. Many credit unions encourage members who wish to have overdraft protection to link the checking account to their savings account in order to minimize overdraft fees.

There is one significant issue with linked savings accounts. Under the Federal Reserve's Regulation D, a consumer may not make more than six transactions per month from his or her savings account, with some narrow exceptions. The CFPB should work with the Federal Reserve to clarify that a transfer from a savings account to cover overdrafts from accounts at the same depository institution are not covered Regulation D transactions that count against the six transaction limit. Without addressing the limits imposed on savings accounts by Regulation D, any attempt to encourage more consumers to link checking accounts will prove inadequate.

G. Consumer Complaint Database

In 2013, the CFPB created the "Consumer Complaint Database" to publicly disclose credit card complaints that the Bureau received from consumers. The database has been expanded to include complaints that the CFPB receives on most financial products, such as mortgages, bank accounts and services, private student loans, other consumer loans, credit reporting, money transfers, payday loans, and debt collection.

While NAFCU acknowledges the importance of complaint resolution, it is concerned with the Bureau's complaint database and its disclosure process. The CFPB does not verify the accuracy of member complaints before making them publicly available in the database. Although CFPB acknowledges the fact that this data is unverified in a disclosure on the database's website, the disclosure statement is weak and does not effectively emphasize that the data is unverified. As a result, baseless complaints are often publicly disclosed on the CFPB's website. Such disclosure raises safety and soundness concerns and unduly places financial institutions' reputation at risk. NAFCU is concerned by this possible increased reputation risk to credit unions, and continues to urge the CFPB to take all steps possible to ensure the complaint data it releases to the public has been verified.

H. Legal Opinion Letters

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

VIII. Regulatory Coordination is More Important Than Ever

With numerous new rulemakings coming from regulators, coordination between the agencies is more important than ever. Having to answer to multiple regulators can create conflicts for credit unions (as outlined in the discussion about legal opinion letters above). Congress should use its oversight authority to make sure that regulators are coordinating their efforts and not duplicating burdens on credit unions by working independently on changes to regulations that impact the same areas of service. There are a number of areas where opportunities for coordination exist and can be beneficial.

Financial Stability Oversight Council (FSOC)

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

Data Security

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

IX. Conclusion: The Need for Regulatory Relief and Congressional Oversight

The growing regulatory burden on credit unions is the top challenge facing the industry today. The number of credit unions continues to decline, as the compliance requirements in a post Dodd-Frank environment have grown to a tipping point where it is hard for many smaller institutions to survive. Credit unions want to continue to aid in the economic recovery, but are being stymied by overregulation. Congress must continue to provide vigorous oversight to the regulators of credit unions, and encourage them to look for ways to provide relief for credit unions through commonsense and coordinated regulation and eliminating or amending outdated requirements such as those outlined in NAFCU's "Dirty Dozen" and in this statement. Congress should also enact the regulatory relief measures outlined in NAFCU's "Five Point Plan for Credit Union Regulatory Relief" and stand ready to step in and take action on the issues outlined in this statement should regulators fail to take the appropriate steps.

We thank you for the opportunity to share our thoughts with you today.

Attachment A:

**NAFCU's Five-Point Plan for Credit Union
Regulatory Relief**

Learn How NAFCU's Five-Point Plan Will Bring Regulatory Relief to Credit Unions

In February 2013, NAFCU was the first trade association to call on this Congress to provide comprehensive broad-based regulatory relief for credit unions. As part of this effort, NAFCU sent Congress a five-point plan for regulatory relief that will significantly enhance credit unions' ability to create jobs, help the middle class, and boost our nation's struggling economy. The five-point plan is built on a solid framework of recommendations that provide regulatory relief through the following:

1. Administrative Improvements for the Powers of the NCUA

- › Allow a federal credit union to petition NCUA for a waiver of a federal rule in favor of a state rule.
- › Provide NCUA the authority to delay implementation of CFPB rules that affect credit unions and to tailor those rules for credit unions' unique structure.
- › Require a cost/benefit analysis of all rules that includes a three-year look back and reevaluation of rules that cost 20 percent or more than their original cost estimate.
- › Enact new examination fairness provisions to help ensure timeliness, clear guidance and an independent appeal process free of examiner retaliation.
- › Improve the Central Liquidity Facility by removing the subscription requirement for membership and permanently removing the borrowing cap.

2. Capital Reforms for Credit Unions

- › Direct NCUA and industry representatives to conduct a study on prompt corrective action and recommend changes.
- › Modernize capital standards by directing the NCUA Board to design a risk-based capital regime for credit unions that takes into account material risks and allows the NCUA Board to authorize supplemental capital.
- › Establish special capital requirements for newly chartered federal credit unions that recognize the unique nature and challenges of starting a new credit union.

3. Structural Improvements for Credit Unions

- › Direct NCUA, with industry input, to conduct a study of outdated corporate governance provisions in the Federal Credit Union Act and make recommended changes to Congress.
- › Improve the process for expanding a federal credit union's field of membership by allowing voluntary mergers among multiple common bond credit unions, easing the community charter conversion process and making it easier to include those designated as "underserved" within a credit union's field of membership.



4. Operational Improvements for Credit Unions

- › Raise the arbitrary cap on member business loans to 27.5% or raise the exemption on MBL loans from \$50,000 to \$250,000, adjusted for inflation, and exempt loans made to non-profit religious organizations, businesses with fewer than 20 employees and businesses in "underserved areas."
- › Remove requirements to mail redundant and unnecessary privacy notices on an annual basis, if the policy has not changed and new sharing has not begun since the last distribution of the notice.
- › Allow credit unions greater authority and flexibility in how they invest.
- › Provide NCUA the authority to establish longer maturities for certain credit union loans and greater flexibility in responding to market conditions.
- › Provide federal share insurance coverage for Interest on Lawyers Trust Accounts (IOLTAs).

5. 21st Century Data Security Standards

- › Establish national standards for safekeeping of all financial information.
- › Establish enforcement standards for data security that prohibit merchants from retaining financial data, and require merchants to disclose their data security policies to customers.
- › Hold merchants accountable for the costs of a data breach, especially when it was due to their own negligence; shift the burden of proof in data breach cases to the party that incurred a breach and require timely disclosures in the event of a breach.

For more information, visit www.nafcu.org/regrelief.



National Association of Federal Credit Unions | www.nafcu.org

Attachment B:

NAFCU's "Dirty Dozen"

12 Regulations to Eliminate or Amend

NAFCU's "Dirty Dozen" - Twelve Regulations to Eliminate or Amend

- 1. Expand credit union investment authority** to include permissible investments in derivatives, securitization and mortgage servicing rights. NAFCU strongly pushed for the expansion of credit unions' investment authority to include the ability to engage in limited derivatives activities. NAFCU will continue to seek this authority for qualified credit unions. In addition, NAFCU will push for the authority to securitize loans and expanded ability to invest in mortgage servicing rights.
- 2. Seek updates and modernization of the NCUA's fixed assets rule.** In particular, the NCUA should: (1) increase the current 5 percent aggregate limit; (2) re-define what constitutes "fixed assets"; and, (3) improve the process of obtaining a waiver.
- 3. Improve the process for credit unions seeking changes to their field of membership.** Improvements should include: (1) enabling credit unions to strengthen their associational membership charter; (2) streamlining the process for converting from one charter type to another; (3) remove or greatly increase the current population limits for serving members in a metropolitan area (1 million) and contiguous political jurisdictions (500,000); and, (4) making it easier for all credit unions to add "underserved" areas within their field of membership.
- 4. Increase the number of transfers allowed to be made per month from savings accounts.** The restriction on "convenience transfers" under Regulation D presents an ongoing concern for NAFCU and its members. Members are often unable to understand and remember the arbitrary limits on the number and types of transfers the regulations permit them to make from their savings account. Members expect to have the ability to transfer their funds with ease to and from particular accounts, and the regulation's six-transfer limitation from savings accounts creates an undue burden for both members and credit unions. This six-transfer limitation should be updated and increased to at least nine transfers per month, while still making a distinction between savings and transaction accounts.
- 5. Seek added flexibility for credit unions that offer member business loans.** These improvements could include: (1) securing credit union-friendly changes to the waiver process; (2) increasing the general minimum loan-to-value ratio from 80% to 85%; and, (3) securing removal of the 5 year relationship requirement.
- 6. Update the requirement to disclose account numbers to protect the privacy of members.** Credit unions are currently required to list a member's full account number on every periodic statement sent to the member for their share accounts pursuant to Regulation E. These requirements need to be updated to allow the credit union to truncate account numbers on periodic statements in order to protect the privacy of the member and to reduce the risks of fraud and identity theft.
- 7. Update advertising requirements for loan products and share accounts.** The regulatory requirements for advertisement of credit unions' loan products and share accounts have not kept pace with technological changes in the current market place. The requirements of Regulation Z and Truth in Savings should be updated to reflect these changes and advances in practical advertisements and the disbursement of information, while maintaining the integrity and accuracy of the information that the member truly needs to know from the advertisement.
- 8. Modernize NCUA advertising requirements to keep up with technological changes and an increasingly mobile membership.** Update NCUA regulations to clarify that the official sign is not required to be displayed on (1) mobile applications, (2) social media, and (3) virtual tellers.



9. **Seek improvements to the Central Liquidity Facility** by reducing the amount of time that it takes for a credit union to secure access to liquidity. In addition, work with the NCUA to secure changes the Central Liquidity Facility by removing the subscription requirement for membership and permanently removing the borrowing cap.
10. **Obtain flexibility for federal credit unions to determine their choice of law.** Federal credit unions should be allowed the opportunity to choose the jurisdiction under which they operate without surrendering their federal charter. To this end, NAFCU will work with the NCUA to establish a waiver process under which a federal credit union, taking into account safety and soundness considerations, would choose the state law under which it wants one or more of its operations.
11. **Update, simplify and make improvements to regulations governing check processing and funds availability.** These enhancements should include: changing outdated references (i.e., references to non-local checks); changes that are required by statute and are already effective and incorrectly stated in the regulation; and changes that enable credit unions to address fraud.
12. **Eliminate redundant NCUA requirements to provide copies of appraisals upon request.** Credit unions are required to provide copies of appraisals under the CFPB's final mortgage rules upon receipt of an application for certain mortgages. The NCUA's requirements to provide a copy upon request should be amended to remove this duplicative requirement.

