NAFCU

National Association of Federal Credit Unions

Testimony of

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"Legislative Proposals to Improve the Structure of the Consumer Financial Protection Bureau"

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Introduction

Good morning, Chairman Capito, Ranking Member Maloney and Members of the Subcommittee. My name is Lynnette Smith and I am testifying this morning on behalf of the National Association of Federal Credit Unions (NAFCU). I serve as the President and CEO of Washington Gas Light Federal Credit Union in Springfield, Virginia. Washington Gas Light FCU has more than 6,800 members with assets totaling $80.9 million.

NAFCU is the only national organization exclusively representing the interests of the nation's federally chartered credit unions. NAFCU member credit unions collectively account for approximately 64 percent of the assets of all federally chartered credit unions. NAFCU and the entire credit union community appreciate the opportunity to discuss the profound impact that regulatory restructuring under the *Dodd-Frank Wall Street Reform and Consumer Protection Act* [P.L. 111-203] is having, and will continue to have, on credit unions. NAFCU is especially pleased to participate in this hearing today concerning proposals to improve the structure of Consumer Financial Protection Bureau (CFPB).

America's credit unions have always remained true to their original mission of "promoting thrift" and providing "a source of credit for provident or productive purposes." In fact, Congress acknowledged this point when it adopted the Credit Union Membership Access Act (CUMAA – P.L. 105-219) over a decade ago. In the "findings" section of that law, Congress declared that, "The American credit union movement began as a cooperative effort to serve the productive and provident credit needs of individuals of modest means … [and it] continue[s] to fulfill this public purpose."

To be clear, credit unions and other community based financial institutions were not the root cause of the housing and financial crises. As the Subcommittee is aware, this point was recently reiterated by the co-chairmen of the congressionally established Financial Crisis Inquiry Commission during testimony before the House Financial Services Committee on February 16, 2011.

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. There are many consumer protections already built into the Federal Credit Union Act, such as the only federal usury ceiling on financial institutions and the prohibition on pre-payment penalties that other institutions have often used to bait and trap consumers into high cost products.

Despite the fact that credit unions are already heavily regulated, were not the cause of the financial crisis, and actually helped blunt the crisis by continuing to lend to credit worthy members during difficult times, they are still affected by a number of provisions contained in the Dodd-Frank Act. For example, all credit unions are subject to the rulemaking authority of the new CFPB. The additional requirements in Dodd-Frank and new rules soon to come out of the CFPB are leading to an overwhelming number of new compliance burdens, which will take credit unions considerable time, effort, and resources to resolve.

We applaud recent efforts by the Obama Administration and the House of Representatives to tackle excessive regulations that hamper the ability of an industry to create jobs and aid in the economic recovery. With a slew of new regulations emerging from the Dodd-Frank Act, such relief from unnecessary or outdated regulation is needed now more than ever by credit unions.

NAFCU has long recognized the need for additional consumer protection in the financial services arena. From the moment the Obama Administration released its white paper in June 2009 calling for the creation of a CFPB-like entity, NAFCU supported additional regulation for bad actors on Wall Street, as well as rating agencies. We believe that if a CFPB is to exist, its primary focus should be on regulating the unregulated in the financial services arena, and not adding new regulatory burdens to those entities that already fall under a functional regulator. We are concerned that the current CFPB structure encourages more regulation for those who are already regulated, instead of focusing on the unregulated entities that pose the biggest threat to consumers.

NAFCU also supported the National Credit Union Administration's (NCUA) establishment of an office dedicated to consumer protection. Given that credit unions did not create the financial crisis, it's perplexing why Congress ultimately placed credit unions under the jurisdiction of the CFPB.

I cannot emphasize enough how burdensome and expensive unnecessary Dodd-Frank Act related compliance costs will be for credit unions. My credit union only has a staff of 17. My employees already spend countless hours updating disclosure booklets and Web sites and constantly rewriting documents to comply with the never ending changes to laws and regulations. An ever-increasing number of new burdens in just the last couple of years – whether from new credit card legislation or new overdraft protection rules – have kept my compliance officer busy.

The 2,000+ page Dodd-Frank Act has already required countless new disclosures while creating operational concerns for my credit union. New or updated policies, procedures, and/or changes in disclosures have been or soon will be required on appraiser independence, Regulation CC, risk-based pricing, loan originator compensation and steering, escrow accounts and TILA/RESPA, just to name a few. Unfortunately, there is more to come. Indications are that some of the first areas that the CFPB may tackle include mortgage lending and credit card practices – areas that have already seen a number of changes in recent years. Indeed, less than two years ago, Congress passed sweeping legislation affecting the credit card industry. Just last month, the Federal Reserve issued its fourth rule implementing that legislation. The four final rules span approximately 1,000 pages. Even with all of those changes in just the last two years, the CFPB has already indicated that it intends to revise credit card rules once again. In most of these areas, there were not problems with credit unions. However, we all must comply with the new "solutions" that the regulators deliver.

The debit interchange price cap amendment remains NAFCU's number one concern with Dodd-Frank, and accordingly, we are pleased to see the introduction of H.R. 1081, and look forward to working with this Subcommittee to enact this vital legislation. I will focus my comments today on the other main concern with the Dodd-Frank legislation – the impact on credit unions of the new Consumer Financial Protection Bureau.

Regulatory Reform and the Consumer Financial Protection Bureau

The creation of the new Consumer Financial Protection Bureau (CFPB) is potentially problematic as the Bureau will have rule writing authority over credit unions of all sizes, and examination and enforcement authority for those above an arbitrary threshold of $10 billion. NAFCU has consistently opposed efforts to include credit unions, regardless of size, under the new CFPB. As not-for-profit cooperatives owned by the people they serve – their members – credit unions have different motives in serving their members than for-profit financial service entities. Unfortunately, despite the Financial Services Committee holding numerous hearings on regulatory reform in the last Congress, credit unions were ultimately included in the scope of the new CFPB without a single hearing to examine whether or not they should be covered by the CFPB.

It is with these facts in mind that NAFCU has been at the forefront of opposing the inclusion of credit unions under the new CFPB and would urge the subcommittee to return existing authority on rulemaking, examination and enforcement authority for all credit unions to the National Credit Union Administration (NCUA).

Nonetheless, if the current authorities of the CFPB remain in place, we do see other areas where the structure and operations of the CFPB can be improved.

Financial Stability Oversight Council Veto

While we were pleased to see the Financial Stability Oversight Council (FSOC) granted some "veto" authority over some proposed CFPB rules if they are found to create safety and soundness concerns, we believe the current veto authority does not go far enough. NAFCU supports and urges the adoption of legislation proposed by Representative Sean Duffy, Chairman Capito, and full Committee Chairman Spencer Bachus to modify the threshold needed for the FSOC to veto a proposed rule, and that clarifies the standard of what can be considered. We believe this approach to make it a majority of the FSOC (minus the CFPB Director) is a positive step that ensures safety and soundness concerns do not take a back seat in this new regulatory environment.

CFPB Governance

NAFCU is pleased to see H.R. 1121, legislation introduced by Chairman Bachus and others to create a 5-person commission to govern the CFPB. We believe a 5-person Board has benefits over one single director. Moving forward under the law that is in place at this time, however, NAFCU believes that the CFPB must have a Senate confirmed director before it becomes an official stand alone federal agency (scheduled to be on July 21, 2011), and we would support legislation to not allow the transfer date to move forward as scheduled without a confirmed director in place. Lawmakers, their constituents, and every entity under the CFPB deserve a fair and open process in which candidates that may head the new agency are properly vetted. After Senate confirmation, the new director should routinely testify before Congress about the CFPB's work. This will be especially important in the agency's infancy while credit unions and others adjust to a new regulatory framework, and the credit union prudential regulator, the NCUA, works to ensure that new protection plans don't create unintended safety and soundness concerns.

CFPB Examinations

NAFCU is concerned about the broad authority granted to the CFPB to partake in examinations, especially "ride-along" examinations with functional regulators before the designated transfer date. We would support legislation to remove this authority.

Furthermore, in these tough budgetary times, we believe it would be prudent use of taxpayer dollars for Congress to transfer CFPB examinations back to functional regulators if only a handful of that type of institution charter fall under CFPB examination authority. For example, only three credit unions are above the current $10 billion threshold and would be subject to examination and enforcement authority of the CFPB. We believe it is a waste of taxpayer dollars for the CFPB to have credit union examination teams for only three institutions, when the NCUA has handled examining these institutions for decades. Congress should require the CFPB to delegate that authority back to the NCUA.

__Additional Suggestions for Improving the CFPB__

We would urge Congress to take action to make the following additional changes to the CFPB:

- Raise examination and enforcement threshold to $50 billion: Raising the arbitrary $10 billion threshold to $50 billion for insured depository institutions subject to examination and enforcement authority of the new CFPB would allow the CFPB to focus on the very largest national banks and unregulated financial services providers and not add this new burden on credit unions, regional banks and community banks – the institutions that were primarily the "good actors" before this past crisis. It should be noted, in the only vote in the 111th Congress that the full Committee took where it had a choice to replace the arbitrary $10 billion number found throughout the Dodd-Frank Act, the Committee choose $50 billion by an overwhelming bipartisan margin of 52-17 (Full Committee Record Vote FC-99). Furthermore, we believe all monetary thresholds in Dodd-Frank should be indexed for inflation on an annual basis. This is important to keep the intent of the legislation intact over time. $10 billion in assets today will not be the equivalent of $10 billion in assets next year, and NAFCU is concerned that more and more institutions will find themselves crossing this arbitrary line and will become subject to new and unintended requirements.

- Unified Mortgage Loan Disclosure: Although Dodd-Frank calls for a joint HUD-RESPA rule concerning mortgage loan disclosures, the bill provides an important exception—it leaves the CFPB with the final say on whether a new rule is needed.

A combined disclosure rule is critical to avoiding some of the confusion and overlap that currently exists during the mortgage loan transaction process, easing the compliance burden on financial institutions and reducing confusion for borrowers.

- CFPB Document Access: While Dodd-Frank excludes financial institutions with $10 billion or less in assets from the examination authority of the CFPB, the new agency is provided with unlimited access to financial reports concerning covered persons issued by other regulators. Since the reports are drafted by federal agencies as part of their examination procedures, CFPB access to the reports essentially amounts to an examination in itself, even for those institutions with assets of $10 billion or less. NAFCU does not believe that this is the result Congress was seeking to achieve, and asks that this broad language be narrowed appropriately.

- Funding and Pay: We believe that Congress should change the funding mechanism for the CFPB to require Congressional appropriation. We believe that this would allow better oversight of this new powerful agency. One aspect to consider in this approach would be to require that a majority of CFPB resources are focused on regulating the previously unregulated, and not just used as more money spent to regulate those that are regulated by their own functional regulators. Subjecting the CFPB to the annual appropriations process would allow Congress to provide oversight and ensure that this balance is being met.

Furthermore, we believe Congress should examine whether or not the CFPB should be on the General Schedule (GS) pay scale, as special pay rules for the agency can lead to their own series of budget issues.

- Curtail or Clarify the Ability of CFPB to act under UDAP: While the ability to prevent unfair and deceptive practices is important, we are concerned that the CFPB's authority under UDAP could amount to a blank check for it to delve into any number of areas that create new regulatory burdens or hurdles for credit unions. It may be prudent for Congress to require joint-rulemaking with functional regulators when the CFPB wishes to write new rules using its UDAP authority.

- Prevent Reputation Risk to Institutions: While it is important for the CFPB to hear consumer complaints, we believe it is important that the CFPB create safeguards for ensuring that consumer complaints remain confidential and that institutions do not face reputation risk due to unsubstantiated claims.

The Dodd-Frank Act included a section (Section 1100G) that says the CFPB must evaluate as part of its regulatory flexibility analysis the impact that its actions have on "small entities" (which includes "small organizations"). We believe that credit unions meet the definition of a "small organization" as defined in Title 5, Section 601 of the U.S. Code as "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field…" We are pleased that Special Assistant Elizabeth Warren in testimony before the Subcommittee highlighted the need to lessen the regulatory costs for credit unions and other small institutions and has told NAFCU that the CFPB is specifically charged with considering the impact of proposed rules on smaller credit unions.

Still, we would urge Congress to make sure that the CFPB abides by this Congressionally-mandated standard, and does not try to narrow the definition of "small entity" in the future in order to strengthen its authority over credit unions. We believe this authority could be enhanced by Congress strengthening the cost-benefit analysis requirement for rule-writing that would allow institutions to rebut the need for rules based on cost thresholds.

Conclusion

In conclusion, the ink is barely dry and credit unions are already being negatively affected by the *Dodd-Frank Wall Street Reform and Consumer Protection Act* [P.L. 111-203]. First and foremost, Congress must act to stop the Federal Reserve from moving forward with proposed debit interchange regulations as the impact of the proposed rule on credit unions and their members will be devastating.

With respect to the Consumer Financial Protection Bureau, credit unions remain at a loss as to why they have been placed under a new regulatory regime to begin with. That being said, credit unions and their members welcome having an ongoing dialogue with

Congress on possible changes to the structure, governance and authorities of the new CFPB. We are pleased that the Financial Services Committee is moving forward with a number of these ideas.

I thank you for the opportunity to appear before you today on behalf of NAFCU and would welcome any questions that you may have.