



April 14, 2017

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

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

Dear Chairman Crapo and Ranking Member Brown:

On behalf of the America's credit unions, thank you for your thoughtful solicitation of policy proposals to promote economic growth. CUNA and the state credit union associations listed below represent America's state and federal credit unions and their 110 million members. We applaud the approach you are taking to this critical issue.

Credit unions play an integral role in our economy, but we believe they could do even more under a regulatory structure calibrated toward the size, complexity and structure of financial institutions and a modernized credit union charter that ensures not-for-profit, financial cooperatives can meet the savings and credit needs of their members in the 21<sup>st</sup> century financial services marketplace. In the interest of economic growth, we urge Congress to (1) enhance the CFPB exemption authority to give the CFPB clearer direction that its rules ought not impede the delivery of safe and affordable financial services products by credit unions and small banks; (2) establish parity in the treatment of certain multi-family residential loans offered by credit unions; (3) eliminate the statutory credit union member business lending cap; (4) modernize credit union field of membership restrictions.

### **Enhance CFPB Exemption Authority**

Congress provided the CFPB with the authority to exempt any class of covered institutions from any of its rulemakings under Section 1022 of the Dodd-Frank Act. However, the Bureau has resisted using this exemption authority to fully exempt credit unions from any of its rulemakings. Moreover, while under present law the Bureau is required to consult with the prudential regulators primarily responsible for ensuring safety and soundness, it is not presently engaging with the NCUA in a meaningful way during the rulemaking process as evidenced by the NCUA's recent objection to the CFPB's proposed rule for small dollar lending. This has resulted in proposals, rules and guidance for credit unions that are conflicting, confusing and do not take into consideration the concerns of credit unions' prudential regulator.

Furthermore, the Bureau's unwillingness to exercise fully its exemption authority has resulted in credit unions reducing the availability of or eliminating entirely, safe and affordable financial products from the market. Nowhere is this seen more clearly than in the impact of the Bureau's first major rulemaking on remittances. More than half of the credit unions that offered remittances prior to the rule have either stopped offering this service to their members or have significantly reduced offering the service to stay below the miniscule exemption threshold. Indeed, CFPB Director Cordray himself noted at a recent hearing in the House Financial Services Committee that today 96% of international remittances run through large banks or nonbank providers, the very abusers from whom this rule was designed to protect consumers.<sup>1</sup> When a 'consumer protection' rule drives out safe providers and forces consumers into the hands of abusers, this is not consumer protection.

We believe further clarity about Congress's intent here would offer significant benefits to the economy by providing additional operating flexibility to smaller, well-regulated community financial institutions that did not cause the financial crisis. In 2014, the cost of regulatory burden on credit unions and their members was \$7.2 billion. This represented a 40% increase in compliance costs from 2010. Since 2014, significant new rulemakings have taken effect, which will have undoubtedly increased the cost credit unions and their members are paying to comply with rules designed for abusers. By more clearly directing the CFPB to provide meaningful exemptions for institutions with a history of providing safe and affordable financial services, these institutions – credit unions and small banks – can take resources they intend to apply to compliance and invest them instead in their local economy.

Representative Roger Williams (R-TX) has introduced a bill that we believe would be a good start toward this end. We encourage the Committee to consider legislation consistent with H.R. 1264.

### **Provide Parity in the Treatment of 1-4 Family Non-Owner-Occupied Residential Loans**

Under current law, when a bank makes a loan for the purchase of a 1-4 unit, non-owner-occupied residential property, the loan is classified as a residential real estate loan. However, when a credit union makes the same loan, it is required to be classified as a business loan, and is therefore subject to the statutory member business lending cap.

Correcting this disparity would provide economic growth in two ways. First, it would enable credit unions to provide additional credit to borrowers seeking to purchase residential units and help stimulate investment in affordable rental real estate and employment in the construction trades. Further, changing the statutory classification of these loans would free up as much as \$4 billion in business lending cap space, allowing credit unions to more fully serve their small business members.

We encourage the Committee to consider S. 836, which has been introduced by Senators Wyden (D-OR), Murkowski (R-AK), Warren (D-MA) and Markey (D-MA).

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<sup>1</sup> CFPB Director Richard Cordray in response to a question by Representative Nydia Velazquez (D-NY) at a hearing entitled, "Semi-Annual Report of the Bureau of Consumer Financial Protection." April 5, 2017.

## **Eliminate the Statutory Member Business Lending Cap**

We urge Congress to eliminate the statutory cap on credit union member business lending. Doing so would free up significant additional capital for small businesses and help foster economic activity and job growth in areas served by business lending credit unions. We estimate that eliminating the cap on credit union member business lending would provide nearly \$5 billion in new small business lending and help to create more than 54,000 jobs in the first year alone.<sup>2</sup>

We understand that this proposal will meet the ire of some in the banking industry. However, it is worth noting that the statutory cap on credit union member business loans is arbitrary and is not based on any safety and soundness consideration, nor is it based on any historical restriction arising from the credit union mission. For 90 years prior to the enactment of the Credit Union Membership Access Act of 1998, credit unions offered small business loans to their members without a statutory cap. In fact, some of the first loans made by the original credit unions at the turn of the 20<sup>th</sup> century were made for entrepreneurial purposes. This type of lending is perfectly compatible with the credit union mission, the history of the credit union movement, and the tax status that Congress has conveyed to credit unions because of their structure and mission.

Congress should scrutinize any banker claim that eliminating the statutory cap on credit union member business lending represents a competitive disadvantage to banks, particularly small banks. It is well established that during the financial crisis, credit unions continued to lend to their small business members while banks – large and small – pulled out of the market.<sup>3</sup> In fact, we heard frequently during this time and since that some banks refer small businesses to credit unions because of our willingness to lend. Further, a 2011 report commissioned by the Small Business Administration suggested that increasing the ability of credit unions to lend to small businesses provides new credit opportunities to small businesses as opposed to displacing bank credit availability.<sup>4</sup>

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<sup>2</sup> We arrive at this estimate by assuming first that the credit unions unaffected by the cap (those previously grandfathered, Low Income Designated, and/or non-federally insured) will see no increase in their MBL portfolio due to the change. Second, we assume that credit unions not currently engaged in member business lending would chose to enter the MBL lending segment modestly at just 1 percent of total assets. Finally, we assume that those currently engaged in member business lending and subject to the cap would increase their MBL lending to 60 percent of their current use rate (which implies a baseline estimate of about 10 percent MBL growth, consistent with the observed average growth rate in credit union MBLs since the beginning of the recession of 10.6%). Additionally, those currently issuing MBLs and subject to the cap would be further restricted by assuming (1) credit unions below 6 percent net worth to assets would be constrained to zero growth in their MBL portfolio, (2) credit unions between 6-7 percent net worth to assets would remain capped at 12.25 percent of assets, and (3) credit unions currently with a MBL ratio greater than 10 percent would be limited to at most a 30 percent increase in the 1st year. These 3 stipulations on the credit unions currently engaged in MBL lending and subject to the cap are intended to address safety and soundness concerns.

<sup>3</sup> Smith, David M., “Commercial Lending During the Crisis: Credit Unions vs. Banks.” Filene Research Institute. 2012. 12. Found at: [https://filene.org/assets/pdf-reports/268\\_Commercial\\_Lending.pdf](https://filene.org/assets/pdf-reports/268_Commercial_Lending.pdf).

<sup>4</sup> Wilcox, James A., “The Increasing Importance of Credit Unions in Small Business Lending.” Small Business Administration Office of Advocacy. 2011. Found at: <https://www.sba.gov/sites/default/files/files/rs387tot.pdf>.

We encourage the Committee to consider legislation to repeal Section 107a of the Federal Credit Union Act.

### **Modernize Credit Union Field of Membership**

As you know, credit unions are subject to field of membership restrictions that limit consumers' ability to join any credit union. Even before these restrictions were required by law, credit unions imposed them as a tool for determining a borrower's credit worthiness. The idea was that if the members of a credit union worked or lived side-by-side they would be able to assess the character and wherewithal of their fellow members in lending decisions. This proved to be an important tool for determining credit worthiness in the early and mid-twentieth century, but today we have much more sophisticated mechanisms for determining credit worthiness. These new tools render field of membership restrictions obsolete. In fact, we believe if Congress were to consider the question today, it would not impose field of membership restrictions on credit unions so that consumers would have equal access to any not-for-profit, financial cooperative.

Expanding consumers' access to safe and affordable financial services provided by America's credit unions will promote economic growth. Congress should make it easier – not more difficult – for consumers and small businesses to join credit unions. We encourage the Committee to modernize credit union field of membership restrictions. In particular, we would urge Congress to (1) remove the word “local” from the definition of “well-defined, local community, (2) allow certain charter types to easily serve “underserved areas”; (3) eliminate the necessity for a physical office or facility to establish the ability to serve an underserved area; and (4) eliminate unnecessary paperwork for deciding that a particular group should be allowed to join a federal credit union.

#### *Suggested Legislative Changes:*

Amend Section 109 of the Federal Credit Union Act (12 U.S.C. 1759) as follows:

- Remove the word “local” in subsections (b)(3) and (g)(1) from the definition of “well-defined, local community”;
- In subsection (c)(2), require only a determination by NCUA that (a) no concerns about discrimination; (b) the federal credit union's service proposal is reasonable; and (c) the federal credit union has the financial capability to expand service to the proposed area(s);
- Eliminate subsection (d); and
- Amend subsection (f)(2) by dropping (D) and renumber (E) as (D).

### **Conclusion**

For more than 100 years, America's credit unions have fulfilled their mission to promote thrift and provide access to credit for provident purposes. Through the fulfillment of this mission and the success of their members, America's credit unions have become a growing and more essential part of the American economy. Still, the law in many areas holds credit unions back from doing even more for their members, their communities and the economy in general. We

hope you will give the proposals we have put forward full and fair consideration, and we look forward to working with you toward ensuring credit unions can continue to do their part to grow the economy.

On behalf of America's credit unions and their 110 million members, thank you for your consideration.

Sincerely,

Credit Union National Association  
Alaska Credit Union League  
Association of Vermont Credit Unions  
California Credit Union League  
Carolinas Credit Union League  
Cooperative Credit Union Association  
Cornerstone Credit Union League  
Credit Union Association of New Mexico  
Credit Union Association of the Dakotas  
Credit Union League of Connecticut  
Georgia Credit Union Affiliates  
Hawaii Credit Union League  
Heartland Credit Union Association  
Iowa Credit Union League  
Illinois Credit Union System  
Indiana Credit Union League  
Kentucky Credit Union League  
League of Southeastern Credit Unions  
Louisiana Credit Union League  
Maryland & DC Credit Union Association

Maine Credit Union League  
Michigan Credit Union League  
Minnesota Credit Union Network  
Mississippi Credit Union Association  
Montana Credit Union Network  
Mountain West Credit Union Association  
Nebraska Credit Union League and  
Affiliates  
New Jersey Credit Union League  
New York Credit Union Association  
Nevada Credit Union League  
Northwest Credit Union Association  
Ohio Credit Union League  
Pennsylvania Credit Union Association  
Tennessee Credit Union League  
Utah Credit Union Association  
Virginia Credit Union League  
West Virginia Credit Union League  
Wisconsin Credit Union League