Testimony of

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of

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On behalf of

The National Association of Federally-Insured Credit Unions

"Fostering Economic Growth: The Role of Financial Institutions in Local Communities"

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Introduction

Good morning, Chairman Crapo, Ranking Member Brown and Members of the Committee. My name is Steve Grooms and I serve as the President/CEO of 1st Liberty Federal Credit Union in Great Falls, Montana. I am testifying today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU). Thank you for holding this important hearing today on ways to help community financial institutions foster economic growth.

I have 34 years of experience in the credit union industry, including the last 17 as the President/CEO of 1st Liberty Federal Credit Union. 1st Liberty FCU is a $170 million federal credit union with over 17,000 members. It has seven branch offices and serves as the on-base credit union for Malmstrom AFB. In addition 1st Liberty FCU is located in the communities of Grand Forks, North Dakota and North Central Montana serving members of Grand Forks AFB, and the communities of Grand Forks, Conrad, and Cut Bank, Montana.

As you may know, NAFCU is the only national organization that exclusively represents the interests of the nation's federally-insured credit unions at the federal level. NAFCU is celebrating its 50th anniversary this year. NAFCU member credit unions collectively account for approximately 70 percent of the assets of federally-insured credit unions. NAFCU and the entire credit union community appreciate the opportunity to participate in this discussion on fostering economic growth.

Background on Credit Unions

Historically, credit unions have served a unique function in the delivery of essential financial services to American consumers. Established by an Act of Congress in 1934, the federal credit union system was created, and has been recognized, as a way to promote thrift and to make financial services available to all Americans, many of whom may otherwise have limited access to such services. Congress established credit unions as an alternative to banks and to meet a precise public need – a niche that credit unions still fill today.

Every credit union, regardless of size, is a cooperative institution organized "for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes." (12 USC 1752(1)). While over 80 years have passed since the *Federal Credit Union Act* (FCUA) was signed into law, two fundamental principles regarding the operation of credit unions remain every bit as important today as in 1934:

- credit unions remain wholly committed to providing their members with efficient, low-cost, personal financial service; and,
- credit unions continue to emphasize traditional cooperative values such as democracy and volunteerism.

Credit unions are not banks. The nation's approximately 6,000 federally-insured credit unions serve a different purpose and have a fundamentally different structure than banks. Credit unions exist solely for the purpose of providing financial services to their members, while banks aim to make a profit for a limited number of shareholders. As owners of cooperative financial institutions united by a common bond, all credit union members have an equal say in the operation of their credit union—"one member, one vote"—regardless of the dollar amount they have on account. Furthermore, unlike their counterparts at banks and thrifts, federal credit union directors generally serve without remuneration—a fact epitomizing the true "volunteer spirit" permeating the credit union community.

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 built into the *Federal Credit Union Act*, such as the only federal usury ceiling on financial institutions and the prohibition on prepayment 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 consumers during difficult times, they are still firmly within the regulatory reach of the *Dodd-Frank Act*, including all rules promulgated by the Consumer Financial Protection Bureau (CFPB).

The growing regulatory burden on credit unions was demonstrated by a recent 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. In addition to hiring new compliance personnel, many credit unions have reported that non-compliance staff are regularly called upon to help with the compliance workload. In fact, another recent 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 forced to take time away from serving members to spend time on compliance issues. Most credit unions have limited staff to tackle their daily challenges, and often find themselves in a situation where compliance, not service, becomes the main focus. Every dollar, or hour, spent on compliance is time or money taken away from member service, additional loans, or better rates.

At 1st Liberty, we conservatively estimate that our compliance costs have increased by over $350,000 since 2009. While that may not seem like a lot to Washington bureaucrats, it is a lot in Great Falls, Montana. These costs come from hiring new compliance employees, dealing with 3rd party vendors, increased software costs, as well as time and training for our staff. As regulation increases compliance costs smaller credit unions like mine are having an increasingly difficult time surviving. We've had to shut down three branches in the last four years because of increased costs and tighter margins. Many other smaller credit unions have been merged into larger credit unions, and, while their members maintain the credit union benefits, relationship banking found in towns like Great Falls and Grand Forks is lost.

Lawmakers and regulators readily agree that credit unions did not participate in the reckless activities that led to the financial crisis, so they shouldn't be caught in the crosshairs of regulations aimed at those entities that did. Unfortunately, that has not been the case thus far. Accordingly, finding ways to cut-down on burdensome and unnecessary regulations and compliance costs is a chief priority of NAFCU members.

Regulatory Environment and Economic Growth

NAFCU has always believed that credit unions play an essential and vital role in the economic health of local economies. This was again demonstrated during the recent financial crisis when credit unions were able to continue to lend and help credit worthy consumers and small businesses during difficult times, often when no one else would. Despite the fact that credit unions played no part in causing the financial crisis, they are still heavily regulated and affected by many of the rules meant for those entities that did.

During the consideration of financial reform, NAFCU was concerned about the possibility of overregulation of good actors such as credit unions, and this is why NAFCU was the only credit union trade association to oppose the CFPB having 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. As expected, the breadth and pace of the CFPB's rulemaking is troublesome, and the unprecedented new compliance burden placed on credit unions has been immense. NAFCU continues to believe that credit unions should be exempted from CFPB rulemaking, with authority returned to the National Credit Union Administration (NCUA). As you examine the federal financial regulatory system, we urge you to support such a reform.

The impact of the growing compliance burden is evident in the declining number of credit unions. Since the second quarter of 2010, we have lost more than 1,500 federally-insured credit unions – over 20% of the industry. The overwhelming majority of these were smaller institutions below $100 million in assets. While it is true that there has been a historical consolidation trend in the industry, the passage of the *Dodd-Frank Act* has accelerated this trend. The fact is that many smaller institutions simply cannot keep up with the new regulatory tide and have had to merge out of business or close their doors. This is why regulatory relief remains a top priority for our nation's credit unions and a key to the continuation of relationship banking in the communities where my credit union operates.

We are pleased to see Senators recognizing this need and introducing regulatory relief packages to help community financial institutions. An example is S. 1002, *The Community Lending Enhancement and Regulatory Relief Act of 2017* (CLEAR Relief Act), introduced by Senators Moran, Tester, Heitkamp and Tillis. This regulatory relief package is a positive first step for

community institutions. Section 3 on escrow requirements, section 4 on QM relief and section 6 on TILA/RESPA relief would have benefits to credit unions and their members. Should this legislation move forward, we would also urge you to include the additional provisions from the House-introduced version of this legislation, H.R. 2133, from Representative Blaine Leutkemeyer. Including this language would provide additional and meaningful relief to credit unions on mortgage lending and capital requirements, in addition to regulatory relief and greater clarity from the CFPB.

Tenets of a Healthy and Appropriate Regulatory Environment for Credit Unions

NAFCU believes a healthy and appropriate environment is important for credit unions to thrive. History has shown that a robust and thriving credit union industry is good for our nation's economy, as credit unions fill a need for consumers and small businesses in the financial services marketplace that may otherwise not be met by other institutions.

There are some basic tenets of a healthy and appropriate regulatory environment that NAFCU supports:

NAFCU supports a regulatory environment that allows credit unions to grow. NAFCU believes that there must be a regulatory environment that neither stifles innovation nor discourages credit unions from providing consumers and small businesses with access to credit. This includes the ability of credit unions to establish healthy fields of membership that are not limited by outdated laws or regulatory red tape. It also includes modernized capital standards for credit unions that reflect the realities of the 21st century financial marketplace.

NAFCU supports appropriate, tailored regulation for credit unions and relief from growing regulatory burdens. Credit unions are swamped by an ever-increasing regulatory burden from the CFPB, often on rules that are targeting bad actors and not community institutions. NAFCU supports cost-benefit analysis in regulation, and wants to ensure that we have an effective regulatory environment where positive regulations may be easily implemented and negative ones may be quickly eliminated. NAFCU also believes that enforcement orders from regulators should not take the place of regulation or agency guidance to provide clear rules of the road.

NAFCU supports a fair playing field. NAFCU believes that credit unions should have as many opportunities as banks and non-regulated entities to provide provident credit to our nations' consumers. NAFCU wants to ensure that all similarly situated depositories follow the same rules of the road and unregulated entities, such as payday lenders, do not escape oversight. We also believe that there should be a federal regulatory structure for non-bank financial services market players that do not have a prudential regulator, including emerging Fintech companies.

NAFCU supports transparency and independent oversight. NAFCU believes regulators need to be transparent in their actions, with the opportunity for public input, and should respect possible

different viewpoints. We believe a bipartisan commission structure is the best form of regulatory governance for independent agencies, and all stakeholders should be able to have input into the regulatory process.

NAFCU supports a strong, independent NCUA as the primary regulator for credit unions. NAFCU believes that the National Credit Union Administration is best situated with the knowledge and expertise to regulate credit unions due to their unique nature. The current structure of NCUA, including a 3-person board, has a track record of success. NCUA should be the sole regulator for credit unions and work with other regulators on joint rulemaking when appropriate. Congress should make sure that NCUA has the tools and powers that it needs to effectively regulate the industry.

Ideas to Help Foster Economic Growth

We need both congressional and regulatory action under each of these tenets to help credit unions and the communities that they serve. Action to reduce and streamline unnecessary regulatory burdens will help credit unions, and all community financial institutions, foster economic growth. The next several pages of my testimony will outline areas under each of these tenets where legislative or regulatory action can help foster economic growth.

A. Credit Unions Need an Environment to Thrive and Grow

Credit unions play a key role in providing consumers and small businesses access to credit, often when others will not. These are areas where action will help credit unions:

- **Improvements to Field-of-Membership Restrictions for Credit Unions**

While NCUA has taken recent steps on the regulatory side, NAFCU believes there should be improvements to the *Federal Credit Union Act* to help enhance the federal credit union charter. First, a series of improvements should be made to the field of membership (FOM) restrictions that credit unions face expanding the criteria for defining "urban" and "rural." Furthermore, the *Federal Credit Union Act* should be updated to allow voluntary mergers involving multiple common bond credit unions and to allow credit unions that convert to community charters to retain their current select employee groups (SEGs). Additionally, the word "local" should be removed from the phrase "well-defined, *local* community" in Section 109(b)(3) of the *Federal Credit Union Act*.

Second, all credit unions, regardless of charter type, should be allowed to add underserved areas to their field of membership.

Third, the NCUA should have authority to grant parity to a federal credit union on a broader state rule, if such a shift would allow them to better serve their members and continue to protect the National Credit Union Share Insurance Fund.

- **Capital Reforms for Credit Unions**

NAFCU believes that capital standards for credit unions should be modernized to reflect the realities of the 21st century financial marketplace. As Congress examines and considers modernizing capital standards for community banks, modernizing credit union capital standards must be part of the discussion.

First, a true risk-based capital system for credit unions that more accurately reflects a credit union's risk profile should be authorized by Congress. As part of this effort, NAFCU supports suspending the implementation of NCUA's recent risk-based capital rule, to allow the new leadership at the agency time to review the rule and request any statutory changes that the agency deems necessary

to institute a capital system for credit unions that accurately accounts for risk. NAFCU continues to advocate for NCUA to revisit and reconsider the agency's approach to its risk-based capital (RBC) rule, currently set to take effect on January 1, 2019. We were pleased to see in the recent EGRPRA report, Acting Chairman J. Mark McWatters specifically noted risk-based capital as an area NCUA plans to "substantially revise" – which NAFCU strongly supports.

Second, the NCUA should be given the authority to allow supplemental capital accounts for credit unions that meet certain standards.

- **Allow Credit Unions to Meet the Needs of Small Businesses**

A critical step to foster economic growth in local communities is for Congress to modify the arbitrary and outdated credit union member business lending (MBL) cap. This can be done by raising the current 12.25% limit to 27.5% for credit unions that meet certain criteria or by raising the outdated "definition" of a MBL from last century's $50,000 to a new 21st century standard of $250,000, with indexing for inflation to prevent future erosion. Furthermore, MBLs made to veterans, non-profit religious organizations, businesses in "underserved areas", 1-4 non-owner occupied homes, or small businesses with fewer than 20 employees should be given special exemptions from the arbitrary cap.

B. Credit Unions Need Appropriate, Tailored Regulation and Relief from Growing Regulatory Burdens

Credit unions did not cause the financial crisis, but have been victims in the new tide of regulations aimed at those institutions who did, with over 1,500 institutions disappearing since the passage of the Dodd-Frank Act, primarily due to the new regulatory burdens. Many credit unions have limited compliance teams and, even if they are doing nothing wrong, burdens can stem from the necessity to read thousands of pages of regulation and analysis just to figure out that they are already in compliance or how to use some formula to see if a rule applies to them.

NAFCU believes that, given their unique nature, all credit unions should be exempt from CFPB rulemaking and examination authority, with NCUA once again given authority to write all rules for credit unions, tailoring new proposals to meet the special nature of the credit union industry. One way to do this would be to expand on S. 923, the *Reforming Finance for Local Economies Act*, introduced by Senator Kennedy, that exempts financial institutions under $10 billion from CFPB rules, to include all credit unions.

Short of that, there are other steps which Congress can take to help:

- **Provide Greater Clarity to CFPB's 1022 Exemption Authority**

Congress should modify Section 1022 of the *Dodd-Frank Act* to specify the ability of the CFPB to exempt credit unions from CFPB rules. NAFCU believes Section 1022 currently gives the CFPB broad exemption authority to exempt classes of institutions, including credit unions, from CFPB rules on a case-by-case basis. We believe that this was also the congressional intent of this provision. However, CFPB Director Richard Cordray has testified before Congress that he believes he does not have the authority to outright exempt credit unions from various CFPB rules under Section 1022. This failure of the Bureau to provide outright exemptions for credit unions to various rules, has greatly increased the compliance burden on the credit union industry, as credit unions are now forced to spend time and resources reviewing rules to see if they meet any arbitrary exemption threshold the Bureau may set. Time and money spent on this effort takes away from economic benefits that credit unions could be providing to their members.

Last year, a bipartisan group of 70 Senators sent a letter to Director Cordray urging him to do more with the authority under Section 1022 to reduce the burden on community institutions such as

credit unions. We would urge you to adopt legislation to clarify the ability of the CFPB to specifically exempt credit unions from a CFPB rule. We were also pleased to see a May 24, 2017, letter from Acting NCUA Chairman McWatters to CFPB Director Richard Cordray urging CFPB to make greater use of its 1022 authority when it comes to credit unions.

- **Require the CFPB to Better Tailor Regulations and Subject Them to Review**

NAFCU supports measures that would require the CFPB to better tailor its regulations. Despite credit unions being smaller and less risky than mega-banks, they have too often found themselves subject to burdensome new regulations designed for big banks, and this has a negative impact on their ability to serve their members and foster economic development. This is why we support S. 366, the *Taking Account of Institutions with Low Operation Risk* (TAILOR) *Act* (introduced by Senator Rounds) and S. 21, the *Regulations From the Executive in Need of Scrutiny* (REINS) *Act* (introduced by Senator Paul), as well as subjecting the CFPB to the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) review.

- **Hold Regulators Accountable for Cost and Compliance Burden Estimates**

Cost and time burden estimates issued by regulators such as NCUA and CFPB are often grossly understated. Unfortunately, there often is never any effort to go back and review these estimates for accuracy once a proposal is final. We believe Congress should require periodic reviews of "actual" regulatory burdens of finalized rules and ensure agencies remove or amend those rules that vastly underestimated the compliance burden. A recent survey of NAFCU's membership found that over 55% of credit unions believe compliance cost estimates from NCUA and the CFPB are lower than they are when the credit union actually has to implement the proposal.

We believe Congress should use their oversight authority to require regulators to provide specific details on how they determined their assumptions in their cost estimates when submitting those estimates to OMB and publishing them with proposed rules. It is important that regulators be held to a standard that recognizes that burdens at a financial institution go well beyond additional recordkeeping.

Finally, there are some other areas where the CFPB has been active that are of growing concern to credit unions:

Home Mortgage Disclosure Act (HMDA)

NAFCU and our members support the intended purpose of HMDA, which is to promote fair lending and ensure that consumers receive equitable access to credit in the housing market. Yet the CFPB's Final Rule is not entirely suitable for achieving this statutory purpose, particularly where data collection demands are so costly that they impede lending activity. Furthermore, NAFCU's concerns regarding the Final Rule remain largely unaddressed, and a recent proposal making technical revisions to Regulation C does little to mitigate the burdens arising from collection of increasingly granular HMDA data points. While NAFCU has appreciated the Bureau's efforts to offer technical corrections and additional clarifications, the proposed amendments do not offset the tremendous operational challenges created by the Final Rule.

Under current reporting thresholds, the collection of a vastly expanded HMDA dataset from credit unions that do not originate a significant number of home mortgage loans would be counterproductive and ultimately harm access to credit. Accordingly, NAFCU urges the Bureau to consider amendments that would raise the reporting threshold for close-end mortgage loans in Section 1003.2(g) of the Final Rule.

NAFCU believes that by raising the reporting threshold, smaller credit unions will be spared unreasonable compliance costs that would otherwise impact their capacity to originate affordable mortgages. Furthermore, NAFCU believes that the minimal data received from institutions reporting just above the thresholds in Section 1003.2(g) would be statistically insignificant and yield minimal insight about the communities they serve. NAFCU believes that the resources of small lenders should be spent in their communities, originating the loans that members need rather than satiating the CFPB's appetite for data.

We are also concerned that the vastly expanded HMDA data collection raises serious privacy considerations. HMDA reports currently include the name of the credit union, mortgage amount, year of transaction, and census tract of the property. This information already provides an opportunity to identify the majority of mortgagors being reported under HMDA. Because there is little privacy protection in HMDA data—and because the Bureau has so far offered only future

assurances that a balancing test will be developed to determine the extent of public disclosure—adding more sensitive and non-public information, such as debt-to-income ratios, credit scores, creditworthiness, or borrower age, will leave members less secure and potentially more vulnerable to targeted scams. NAFCU asks that the Bureau provide clarification as soon as possible about how data security concerns will be mitigated through controls on public disclosure of HMDA data.

NAFCU believes the Bureau has failed to adequately consider the net cost of requiring credit unions that originate relatively few mortgage loans to expend considerable resources on reporting new data that would not aid in fulfilling the statutory objectives of HMDA. Additionally, the CFPB has not provided satisfactory justification for requiring collection of new data points that were not specifically mandated by the *Dodd-Frank Act*. Although there may be academic interest in numerous, marginally significant data points, the Bureau has yet to show that these inputs actually achieve HMDA's stated purpose, which is to ensure fair lending and nondiscrimination in the housing market. We agree with Acting NCUA Chairman McWatters' request of the CFPB to use its authority to exempt credit unions from these additional data points.

One approach to providing relief on the HMDA issue would be to pass the *Home Mortgage Disclosure Adjustment Act*, offered by several members of this committee, to raise the HMDA reporting threshold to 500 loans for both closed-end mortgage loans and open-end lines of credit. The new HMDA reporting requirements will be especially burdensome on smaller credit unions like mine, and that is why we also would support the CFPB delaying implementation of the new rule while giving Congress a chance to review it.

Qualified Mortgages

The CFPB has issued a final rule that imposes requirements on credit unions to assess and verify a borrower's ability to repay a mortgage loan before extending the loan. In that same rule, the CFPB defined "qualified mortgage" and extended safe harbor legal protections to mortgages that meet the definition. Many financial institutions have decided to extend only mortgages that meet the definition of safe harbor "qualified mortgage" as they are concerned that they will not be able to sell non-qualified mortgages and are worried about the legal and regulatory risks associated

with extending non-qualified mortgages. At 1st Liberty, even though we are small enough to be exempt, we still limit our loans to 43% debt-to-income ratio because of concerns about liability.

NAFCU believes the definition of qualified mortgage must be revised in a number of ways to reduce the enormous negative impact the rule places on credit unions and their members, in particular the debt-to-income (DTI) threshold (43% of the total loan) and the inclusion of affiliate fees in the calculation of points and fees. While the CFPB finalized a cure for unintentional points and fees overages, NAFCU still believes a legislative change may be necessary to resolve the issue. We also support legislation to create a safe-harbor for mortgage loans held in portfolio at credit unions.

Small Business Data Collection

Section 1071 of the *Dodd-Frank Act* assigns the CFPB the responsibility to issue implementing regulations for collection of small business loan data. In general, Section 1071 aims to facilitate enforcement of fair lending laws and enable communities, businesses and other entities to better identify the needs of women-owned, minority owned, and small businesses. Section 1071 requires financial institutions to collect and report information to the CFPB using systems and procedures similar to those currently used in connection with the Home Mortgage Disclosure Act (HMDA).

While NAFCU acknowledges that taken on its own, Section 1071 is a well-intentioned provision, but when added to other laws and regulations, future implementation of this provision could negatively impact credit unions originating MBLs and other commercial loans. A disclosure regime similar to HMDA could increase MBL underwriting costs and necessitate substantially increased spending on compliance resources. Furthermore, if the ultimate aim of Section 1071 is to promote small business lending, then credit unions have already achieved great success. For example, credit union small business loan growth has dramatically outpaced banks both during and after the financial crisis. Credit unions have maintained strong small business loan growth despite field of membership and other statutory restrictions; however, this trend may experience disruption if the CFPB sees fit to impose additional regulatory burdens.

NAFCU is also concerned that future implementation of Section 1071 may yield confusing information about credit unions and further restrict lending activity as a result of increased compliance costs. Credit unions serve distinct fields of membership, and as a result, institution-level data related to women-owned, minority-owned, and small business lending substantially differs in relation to other lenders. Given the unique characteristics of credit unions and the limits placed on member business loans (MBLs), the CFPB should seek to exempt credit unions from any future rulemaking that compels disclosure of business loan information. We believe it is important that Congress be prepared to step in and legislate in this area if necessary.

C. There Must be a Fair Playing Field in Financial Services

As Congress looks at measures to foster economic growth, it is important the any legislative package be balanced in addressing needs of credit unions and community banks. Capital relief

provisions for banks should be paired with capital relief provisions for credit unions. Business lending provisions for banks should be paired with business lending relief provisions for credit unions. Credit unions want to do their share for economic growth, and they want to ensure that there is a proper regulatory environment for all players in the financial services and payments realm.

- **Provide Credit Unions Parity in the Treatment of Residential Loans**

One easy step to provide parity in business lending relief is in the treatment of certain residential loans. NAFCU urges you to exempt loans for one- to four-unit non-owner occupied dwellings from the credit union member business lending (MBL) definition. This idea was recently introduced as bipartisan legislation, S. 836, the *Credit Union Residential Loan Parity Act*, by Senators Ron Wyden and Lisa Murkowski, which would allow credit unions to treat loans that qualify for the exemption as residential loans with lower interest rates—similar to how banks make those same loans—and not have to count them toward their MBL cap. This would free up capital for additional lending and help foster economic growth.

- **Payday Lenders Need to be Regulated; Credit Unions Need Flexibility to Help**

The concept of a fair playing field also applies when dealing with regulated financial institutions and unregulated entities, who should not be let off the hook as part of regulatory relief.

A prime example is payday lending. NAFCU believes that unregulated actors in this area need to be regulated, but that flexibility should be provided to regulated entities that offer regulated products to meet demand. At 1st Liberty, we were able to help a veteran who was struggling financially and had gotten into trouble with payday lenders. He had already filed bankruptcy and had been in debt to nine different payday lenders for the last five years when he came to us. He wasn't even a member yet. He had $500 loans with each lender, was paying them $10 every week each to roll the debt another week, he had paid them roughly $ 21,600 already and had not reduced the principle balance on any of them.

Based on his circumstances, he did not qualify for a loan, but based on what we do to try to help members where we are able, he needed our help fast. We were able to set up a signature loan for $4500 to be paid off over three years at a 12% interest rate (unsecured rate) with payments of $150

month. We had to go outside of our policies to deal with his unique circumstance – a prime example of why credit unions need to have regulatory flexibility to serve the needs of their members.

In July, 2016, the CFPB published a proposed rule for Payday, Vehicle Title, and Certain High Cost Installment Loans. NAFCU maintains serious concerns about this rule and how it will hamper credit union's ability to meet the credit needs of their members. NCUA has even weighed-in with a similar concern. NAFCU has asked that the CFPB withdraw its rule and consult with NCUA regarding any future plans to regulate short-term, small dollar lending at credit unions. NAFCU strongly recommends that the Bureau exercise its exemption authority granted by Congress to preserve the ability of credit unions to accommodate members with consumer-friendly, short-term, small dollar loans.

An exemption for credit unions from the entirety of the rule would represent the only true solution for mitigating the overwhelming burden imposed by a novel and complex compliance regime. Credit unions cannot reasonably meet the needs of financially distressed members when the cost and time associated with originating just one short-term, small-dollar loan skyrockets to satisfy the CFPB's unwieldly underwriting requirements.

The need for a fair playing field does not just apply across financial services, but with others in the payments eco-system, such as retailers. There is a need for Congress to act to ensure a fair playing field in this realm as well.

- **21st Century Data Security Standards Are Needed**

Credit unions are being adversely impacted by ongoing cyber-attacks against the United States and continued data breaches at numerous merchants. The cost of dealing with these issues hinders the ability of credit unions to serve their members. Congress needs to enact new 21st century data security standards that include: the payment of costs associated with a data breach by those entities that were breached; establishing national standards for the safekeeping of all financial information; require merchants to disclose their data security policies to their customers; requiring the timely

disclosure of entities that have suffered a data breach; establishing enforcement standards for provisions prohibiting merchants from retaining financial data; requiring the timely notification of the account servicer if an account has been compromised by a data breach; and, requiring breached entities to prove a "lack-of-fault" if they have suffered from a data breach.

- **Repeal the Durbin Debit Interchange Amendment**

The interchange price caps passed as part of the *Dodd-Frank Act* have failed to produce the consumer benefits that proponents promised. This provision has essentially been a windfall to merchants and their stockholders, while costing credit unions and their members billions of dollars that could have been used to help foster economic growth through better rates and more loans. We urge you to repeal the debit interchange provision found in the *Dodd-Frank Act* and protect community financial institutions from future harm by opposing any efforts to expand the Durbin price controls to credit interchange.

D. Transparency and Independent Oversight of Regulators

NAFCU believes regulators need to be transparent in their actions, with the opportunity for public input, and should respect possible different viewpoints. Financial institutions should have clear rules of the road to follow, and have an independent process to appeal actions of regulators.

Congress should make sure regulators are focusing on sound public policy and not political agendas.

There are a series of steps NAFCU believes can be taken that will be beneficial to credit unions and community financial institutions in this area:

- **Make Common-Sense Improvements to the CFPB.**

We believe that one way to improve the Bureau would be to change the leadership structure from a single director to a five-member bipartisan commission appointed by the President. NAFCU has long held the position that, given the broad authority and awesome responsibility vested in the CFPB, a five-person commission has distinct consumer benefits over a single director. Regardless of how qualified one person may be, a commission would allow multiple perspectives and robust discussion of consumer protection issues throughout the decision making process. A bipartisan board structure at the CFPB would also help to provide community financial institutions more regulatory certainty by lowering the possibility that the Bureau could become subject to drastic political swings from a single director that could change with each Administration.

We also believe that the main focus of the CFPB should be on unregulated entities operating in the financial services arena and other significant market actors that have a national impact, and thus we believe that the supervision threshold for the CFPB should be raised to $150 billion and indexed for inflation. Making this change would allow functional regulators to focus on community and regional institutions, while allowing the CFPB to focus on the nation's largest financial institutions and otherwise unregulated entities.

- **Require the CFPB to Provide Guidance or Rulemaking for its UDAAP Authority**

Uncertainty stemming from CFPB's authority to take action on entities committing unfair, deceptive, or abusive acts or practices (UDAAP), can prevent institutions from providing services that consumers may want. Credit unions want to comply and provide the services that their members want and need. However, when the CFPB does not provide clarity in regards to UDAAP,

either through rulemaking or guidance, economic opportunity is stymied as institutions fear the CFPB will only regulate through enforcement action. We would urge the adoption of legislative language to require the CFPB to provide more clarity and guidance to those they regulate.

- **Common-Sense Examination Reform**

Credit unions face more examiner scrutiny than ever, as the examination cycles for credit unions went from 18 months to 12 months since the onset of the financial crisis, even though credit union financial conditions continue to improve. We are pleased to see that NCUA has started to return to extended examination cycles, but we think the extended cycles should be available to all low-risk, well-run credit unions. Additional exams mean additional staff time and resources to prepare and respond to examiner inquiries. NAFCU supports effective exams that are focused on safety and soundness and flow out of clear regulatory directives. NAFCU also supports examination fairness legislation to ensure timeliness, clear guidance and an independent appeal process free of examiner retaliation.

E. A Strong, Independent NCUA should be the sole regulator of credit unions

As noted earlier, NAFCU strongly believes that credit unions should be exempt from CFPB regulation and supervision, with that authority for all credit unions returned to the National Credit Union Administration (NCUA). NCUA has the knowledge and expertise that other regulators simply do not about the unique nature of credit unions.

- **NCUA should have pre-emption authority over CFPB rules**

NCUA should have the authority to delay the implementation of a CFPB rule that applies to credit unions, if complying with the proposed timeline would create an undue hardship. Furthermore, given the unique nature of credit unions, the NCUA should have authority to modify a CFPB rule for credit unions, provided that the objectives of the CFPB rule continue to be met.

- **NCUA Needs Proper Authority and Flexibility to Govern Credit Unions**

We are pleased NCUA has been willing to use its authority in recent years to provide credit unions with much-needed relief when congressional action has stalled. A few prime examples of this willingness are the agency's rules relative to member business lending, field of membership, and fixed-assets. However, in each of these rulemakings, the agency stopped short of providing relief to the fullest extent possible so there is more work to be done, whether by the agency or by Congressional action.

We continue to appreciate NCUA's voluntary participation in the *Economic Growth and Regulatory Paperwork Reduction Act of 1996* (EGRPRA) regulation review process. This review provided an important opportunity for credit unions to voice their concerns about outdated, unnecessary or unduly burdensome requirements within NCUA's Rules and Regulations. The EGRPRA report issued in March 2017 was the culmination of a long process and we were encouraged to see the regulators admit that there are many opportunities to do better. In particular, the NCUA portion of the report touched on a number of key areas where NAFCU has sought reform, including risk-based capital. We look forward to continuing to work with NCUA and other regulators to address the problem of regulatory burden and we urge Congress to ensure that they have the tools they need.

- **NCUA Independence and Structure Should be Maintained**

NAFCU also believes that NCUA should continue to be governed by a three-person bipartisan board, and not subject to congressional appropriations. However, we do think there are areas where it is appropriate for congressional oversight of NCUA, including the agency's budget, which is funded by our nation's credit unions and, ultimately, their 108 million members.

Additional Areas to Help Economic Growth

There are a few additional areas where Congress can help credit unions foster economic growth that I would like to outline:

- **Promote Regulatory Coordination**

NAFCU believes that a large part of the regulatory burden problem stems from the cumulative impact of numerous regulations. That is why NAFCU applauded President Donald Trump's

"Executive Order on Core Principles for Regulating the United States Financial System," which directed the U.S. Department of the Treasury to conduct a comprehensive review of the financial regulatory landscape. We are pleased that NCUA has participated in discussions with Treasury as part of the review process and hope they will continue to cooperate with the Administration in a productive manner.

With numerous new rulemakings coming from regulators, coordination between the agencies is more important than ever. 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 jurisdiction. There are a number of areas where opportunities for coordination exist and can be beneficial.

NAFCU has been on the forefront encouraging the Financial Stability Oversight Council (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.

In addition, Section 1023 of the *Dodd-Frank Act* grants the FSOC the authority to stay and set aside Bureau rules by a vote of two-thirds of the members of the Council. A decision to set aside a Bureau regulation renders the rule unenforceable. This authority could spur renewed dialogue between the Bureau and the federal banking agencies regarding rules that may actually pose systemic risk to the financial sector.

As the new Administration continues to review and reform financial regulations, NAFCU welcomes efforts by the members of the FSOC to strongly consider their authority to start holding the Bureau accountable for rules that pose serious risks to financial institutions and the consumers they serve.

- **Support the CDFI Fund**

The Administration's FY 2018 budget proposal has proposed cutting funding for the Community Development Financial Institution (CDFI) Fund. As of January 31, 2017, there were 287 credit unions certified as CDFIs. Representing approximately 27 percent of the total number of certified institutions, CDFI certified credit unions hold more than 50 percent of total CDFI assets. Clearly, CDFI credit unions are critical partners in the CDFI Fund's mission. In recognition of this importance, and in exploring ways to enable even more credit unions to be recognized as CDFIs, the NCUA, CDFI Fund and Treasury entered into a trilateral Memorandum of Understanding (MOU) in January 2016. A significant component of the MOU included the introduction of a streamlined CDFI application process for credit unions, paving the path for more credit unions to seek the designation.

Because they are not-for-profit, cooperative financial institutions, credit unions are focused on providing financial services that are in the best interest of their members. Since CDFI credit unions predominantly serve low-income areas and other target markets, CDFI credit unions are often the only financial services option for consumers in those communities that live paycheck to paycheck. The CDFI Fund grant program helps credit unions serve communities and consumers that large banks don't focus on.

Additionally, because many credit unions cannot raise funds from the capital markets, access to the CDFI Fund grant program is an incentive for credit unions to obtain certification. The grants provided by the Fund are an invaluable resource that aids CDFI credit unions in providing financial services to millions of credit union members. Without these grant funds, thousands of consumers could find themselves without credit union products, such as small dollar loans, credit builder programs, and access to financial education.

Over the past two years, CDFI credit unions received roughly $70 million in grant funding to aid in their efforts to offer financial services to their low- and moderate-income members. Without the CDFI grant program, many CDFI credit unions would not have been able offer new products and loans that provide financial stability for members and their families. It is with this in mind that we

would urge Congress to continue funding for CDFIs. Providing funding for the grant program is an important step in helping credit unions foster economic growth in their local communities.

- **Fix the Department of Defense (DoD) Military Lending Act Final Rule**

As a defense credit union, I would like to share some concerns over potential unintended consequences and negative impacts from DoD's recent MLA rule. NAFCU is in full support of protecting service members from predatory and unscrupulous lenders. It is clear this is the intent of the rule DoD has issued. Credit unions have undertaken considerable efforts to comply with the MLA Rule, and they will continue to do so. However, the challenges presented by the MLA Rule are substantial and many financial institutions continue to struggle to determine the parameters of the rule due to ambiguous text and slim guidance.

Credit unions, as member-owned, not-for-profit cooperatives, consistently provide their members with products and services designed to help each member achieve their individual financial goals. In addition, credit unions have a strong track record of helping active duty members of the armed forces and their families avoid the kinds of debt traps that prompted the passage of the MLA by Congress. That is why NAFCU and our members support the Department's primary goal of protecting active duty members of the armed forces and their families from financial exploitation. However, implementing the MLA Rule has proven to be a difficult undertaking for many credit unions.

NAFCU has, on several occasions, requested the DoD exercise its authority under Section 232.13(c)(2) of the MLA Rule and issue an order extending the limited exemption for credit card accounts until October 3, 2018. NAFCU believes that extending the deadline for credit card account compliance with the MLA Rule is necessary to allow the DoD additional time to consider the consequences of the MLA Rule as applied to credit card accounts, and to develop effective solutions to prevent those consequences from taking place. Given that we are merely months from the current credit card implementation deadline, it is imperative the DoD act quickly and provide relief to the industry.

Conclusion

The growing regulatory burden on credit unions is the top challenge facing the industry today and credit unions are saying "enough is enough" when it comes to the overregulation of the industry. If Congress wants to help foster economic growth, enacting the regulatory relief provisions outlined in my testimony to provide regulatory relief to credit unions and community financial institutions is key. Credit unions need a healthy regulatory environment to succeed and serve the needs of their 108 million members. Small credit unions are disappearing at an ever-increasing pace, and cannot wait forever for congressional action. The time to act is now. Regulators must also do their part and we are encouraged that some are starting to take steps to do so. But more must be done and the committee should also encourage regulators to act to provide relief where they can without additional congressional action.

We thank you for the opportunity to share our thoughts with you today. I welcome any questions you might have.