Testimony of

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On behalf of the

National Association of Federal Credit Unions

"Financing Main Street: How Dodd-Frank is Crippling Small Lenders and Access to Capital"

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Introduction

Good afternoon, Chairman Rice, Ranking Member Chu and Members of the Subcommittee. My name is Scott Eagerton and I am testifying today on behalf of the National Association of Federal Credit Unions (NAFCU). I serve as the President and CEO of Dixies Federal Credit Union, headquartered in Darlington, South Carolina. I have over 20 years of financial industry experience, including the last 10 years in my current role.

Dixies Federal Credit Union was founded on August 25, 1947. Originally serving employees of the Dixie Cup and Plate Company, Dixies is now a community credit union serving 7,000 members in Florence and Darlington counties with nearly $42 million in assets.

As you are aware, NAFCU is the only national organization exclusively representing the federal interests of the nation's federally insured credit unions. NAFCU-member credit unions collectively account for approximately 70 percent of the assets of all federal credit unions. The overwhelming tidal wave of new regulations in the wake of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank) is having a profound impact on all credit unions and their ability to serve their 101 million member-owners nationwide.

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 financial 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 6,100 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.

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). 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."

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. Furthermore, 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 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 Dodd-Frank, including all rules promulgated by the Consumer Financial Protection Bureau (CFPB).

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 regulatory compliance costs is a chief priority of NAFCU members.

Today's hearing is important and the entire credit union community appreciates your interest in the effects of Dodd-Frank on small businesses such as credit unions.

Dodd-Frank and Its Impact on Credit Unions

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 new 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. The CFPB's primary focus should be on regulating the unregulated bad actors, not creating new regulatory burdens for good actors like credit unions that already fall under a prudential 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. While it is true that credit unions under $10 billion are exempt from the examination and enforcement from the CFPB, all credit unions are subject to the rulemakings of the agency and are feeling this burden. While the CFPB has the authority to exempt certain institutions, such as credit unions, from agency rules, they have unfortunately been reluctant to use this authority on a broad scale.

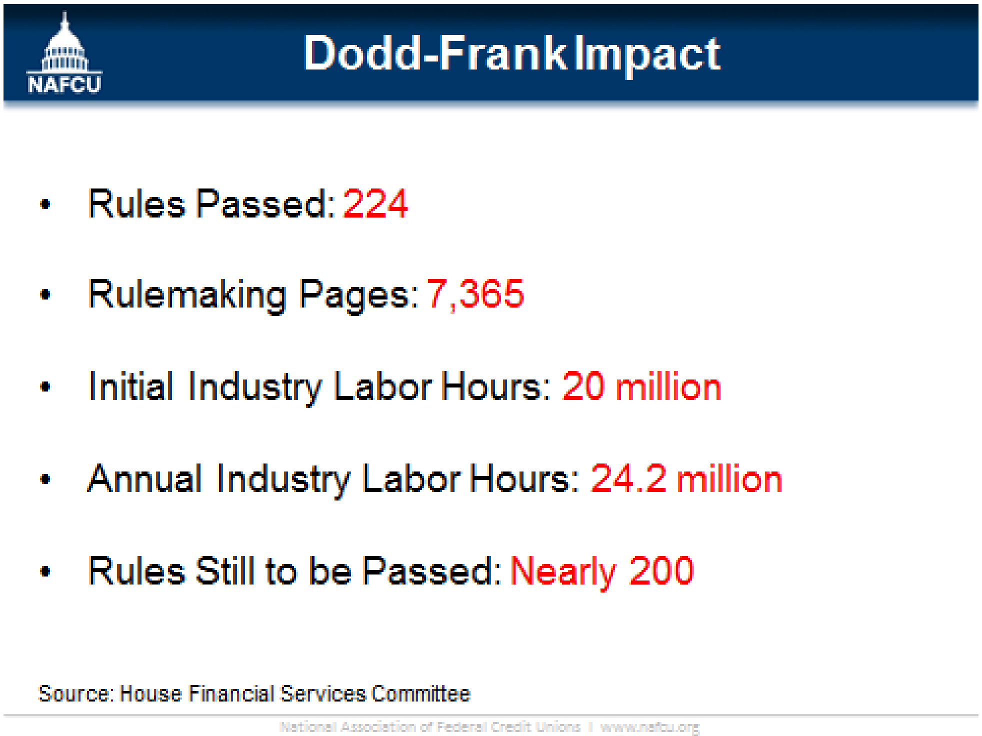
The impact of the growing compliance burden is evident as the number of credit unions continues to decline, dropping by more than 17% (1,280 institutions) since the 2nd quarter of 2010; 96% of those were smaller institutions like mine, below $100 million in assets. A main reason for the decline is the 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 had 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 2013 NAFCU survey of our membership found that 93% of respondents had seen their compliance burden increase since the passage of Dodd-Frank in 2010. At Dixies FCU our compliance costs have risen five-fold since 2009, from about $20,000 a year to $100,000 annually. In addition to adding a full-time employee, non-compliance staff including myself, are regularly needed to help with the compliance workload, taking us away from our normal day-to-day duties serving our members. Many credit unions find themselves in the same situation.

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 forced to take time away from serving members to spend time on compliance issues. Every dollar spent on compliance, is a dollar taken away from member service, additional loans, or better rates.

Unfortunately, consumers are the ones who suffer the most. As credit unions increasingly reassign staff resources to compliance work, there is a proportional decline in member service.

July 21, 2015, marked the five year anniversary of the *Dodd-Frank Act* becoming law. The legislation was supposed to restore the U.S. economy, end “too-big-to-fail” and promote financial stability. Since enactment, we have witnessed large banks grow and small banks and credit unions disappear. A law that was meant to eliminate the risky activities of the biggest banks on Wall Street nearly halted the time-tested undertakings on Main Street. In my testimony today, I will describe the current challenges my credit union and the industry faces in the wake of Dodd-Frank and describe ways that Congress and the regulators can help.



Growing Regulator Budgets in the Wake of Dodd-Frank

The budget of the National Credit Union Administration (NCUA) is funded exclusively by the credit unions it regulates and insures. Every single dollar spent by NCUA starts as a dollar from a credit union somewhere in the United States, and any NCUA expenditure has a direct impact on the daily operations of all regulated and insured credit unions – it's a dollar that could otherwise be used to make a loan to a member or provide a new service. In the current regulatory environment, every dollar becomes that much more important as credit unions of various sizes and complexities expend significant financial and human resources to bring their systems and procedures into compliance with new requirements.

Accordingly, NCUA's budget process is of the utmost and ever-increasing importance to NAFCU's membership, the credit union industry, and Congress. Bipartisan legislation, the *National Credit Union Administration Budget Transparency Act*, H.R. 2287, has been introduced by Representatives Mick Mulvaney and Kyrsten Sinema to require greater transparency and credit union input during NCUA's budget process. NAFCU views this legislation as crucial because credit unions currently have no ability to formally comment or have input on any part of NCUA's budget – every dollar of which they ultimately fund.

Part of this increased cost, both for the agency and for credit unions, has been the move in the financial reform era to 12-month exam cycles for credit unions which NCUA made in 2008 and continues today. NCUA had refined its supervision and examination process in 2001, and, in doing so, developed a Risk-Focused Examination (RFE) approach. Under this approach, eligible federal credit unions that were healthy and posed minimal risks had an examination completed every 12 to 24 months, with a target completion frequency of 18 months. During this time, Dixies' averaged an exam about every 18 months, with the exam averaging about a week. Under the new 12-month examination regime established in 2008, we now have four full time staff members who spend two weeks preparing for the exam, two weeks working with examiners and at least, two weeks following the exam. The cost in wages for that exam was approximately $30,000.

The financial crisis is now over. We believe NCUA should use the authority they already have and return to an 18-month exam cycle for healthy and well-run credit unions. This simple step will help with costs both at the agency and at credit unions and be a step forward to reducing regulatory burden.

Overwhelming Regulatory Burdens on Credit Unions in the Wake of Dodd-Frank

Credit unions are proud of their long track record of helping the economy grow and making loans when other lenders have left various markets. This was evidenced during the recent financial crisis when credit unions kept making auto, home, and small business loans when other lenders cut back.

Although credit unions continue to focus on members' needs, the increasing complexity of the regulatory environment is limiting their ability and taking a toll on the 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 NCUA and the CFPB work to prevent the next financial crisis, even the most well intended regulations have the potential to regulate our industry out of business.

Unfortunately, credit unions like Dixies often become the victim of poor planning and execution by the regulators; new regulation on top of new regulation has hindered Dixies' business and our ability to retain top talent. For example, every time the CFPB changes or updates a mortgage-related rule, several costs are incurred. Most compliance costs do not vary by size, resulting in a greater burden on smaller credit unions like mine. Like large institutions with compliance and legal departments, with each change our small staff is required to update our forms and disclosures, reprogram our data processing systems, and retrain our staff. Unfortunately, these regulation revisions never seem to occur all at once. If all of the changes were coordinated and were implemented at one time, these costs would be significantly reduced and a considerable amount of our resources that were utilized to comply could have been used to benefit our members instead.

In 2015 alone, we have seen this occur four times already. We have had staff departures due directly to these frustrations. Most of our staff has indicated that they do not want to participate in real estate lending because of the constant changes and regulatory uncertainty. Through August of this year, Dixies FCU spent more than $20,000 for systems upgrades and software licenses; this does not even include the man hours spent setting up and learning how to operate the new software. For that we joined a credit union service organization (CUSO) to help with compliance and training of our compliance officers. The cost for membership and training was roughly an additional $7,500. During these times of regulatory adjustment, it is nearly impossible to make mortgage loans; this hurts our members as well as the overall business.

Credit Unions Need Regulatory Relief Post Dodd-Frank

Regulatory burden is the top challenge facing credit unions today. 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 initial "Five-Point Plan for Regulatory Relief" 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 need for regulatory relief is even stronger in 2015, which is why we released an updated version of the plan (Appendix A) for the 114th Congress.

The 2015 plan calls for relief in five key areas: (1) Capital Reforms for Credit Unions, (2) Field of Membership Improvements for Credit Unions, (3) Reducing CFPB Burdens on Credit Unions, (4) Operational Improvements for Credit Unions, and (5) 21st Century Data Security Standards.

Recognizing that there are also 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" list of regulations to remove or amend in December of 2013 that outlined twelve key regulatory issues credit unions face that should be eliminated or amended. While some slight progress was made on several of these recommendations, we have updated that list for 2015 to outline the "Top Ten" (Appendix B) regulations that regulators can and should act on now to provide relief. This list includes:

1. Improving the process for credit unions seeking changes to their field of membership;
2. Providing more meaningful exemptions for small institutions;
3. Expanding credit union investment authority;
4. Increasing the number of Reg D transfers allowed;
5. Additional regulatory flexibility for credit unions that offer member business loans;
6. Updating the requirement to disclose account numbers to protect the privacy of members;
7. Updating advertising requirements for loan products and share accounts;
8. Improvements to the Central Liquidity Facility (CLF);
9. Granting of waivers by NCUA to a federal credit union to follow a state law; and
10. Updating, simplifying and making improvements to regulations governing check processing and fund availability.

NAFCU continues the fight and looks forward to working with Congress to address the many legislative and regulatory challenges faced by the credit union industry today.

Regulators Must Be Held Accountable for Cost and Compliance Burden Estimates

One of the biggest contributors to regulatory burden for credit unions is the fact that 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 underestimate the compliance burden. A March 2013, survey of NAFCU's membership found that over 55% of credit unions believe compliance cost estimates from NCUA and CFPB are lower than the actual costs incurred 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 in proposed rules. It is important that regulators be held to a standard that recognizes burden at a financial institution goes well beyond additional record keeping.

For example, several of NAFCU's members have told us that they have had to spend over 1,000 staff hours to train and comply with all of the requirements of the CFPB's Qualified Mortgage (QM) rules. The CFPB is not the only regulator with inaccurate estimates. NCUA's 2014 submission to OMB estimates the time to complete the Call Report to be 6.6 hours per reporting cycle. A recent NAFCU survey of our members found that many spend between 40 to 80 hours or more to complete a call report. Something is amiss. That's a number of hours of regulatory burden that are not being recognized on just one form. More needs to be done to require regulators to justify that the benefits of a proposal outweigh its costs.

Regulatory Coordination is Needed

With numerous new rulemakings coming from regulators, coordination between the agencies is more important than ever and can help ease burdens. 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.

For example, 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. 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.

The CFPB Can Provide Relief to Credit Unions

NAFCU has consistently maintained that the tidal wave of the Bureau's new regulations, taken individually, and more so in their cumulative effect, have significantly altered the lending market in unintended ways. In particular, the ability-to-repay, qualified mortgage, and mortgage servicing rules have required credit unions of various sizes and complexities to make major investments, and incur significant expenses. Taken all together, these regulations have made credit unions rework nearly every aspect of their mortgage origination and servicing operations.

One area where the CFPB could be the most helpful to credit unions would be to use its legal authority under Section 1022 of Dodd-Frank to exempt credit unions from various rulemakings. Given the unique member-owner nature of credit unions and the fact that credit unions did not participate in many of the questionable practices that led to the financial crisis and the creation of the CFPB, subjecting credit unions to rules aimed at large bad actors only hampers their ability to serve their members. While the rules of the CFPB may be well-intentioned, many credit unions do not have the economies of scale that large for-profit institutions have and may opt to end a product line or service rather than face the hurdles of complying with new regulation. While the CFPB has taken steps, such as their small creditor exemption, more needs to be done to exempt all credit unions.

Credit unions are also further hampered by the fact that the CFPB does not have one consistent definition of "small entities" from rule to rule. We are pleased that the CFPB makes an effort to meet its obligations under the Small Business Regulatory Enforcement Fairness Act (SBREFA). However, we believe that the Bureau must do more to address the concerns of smaller financial institutions in its final rulemaking, so that new rules do not unduly burden credit unions.

Under SBREFA, the CFPB is required to consider three specific factors during the rulemaking process. First, the agency is to consider "any projected increase in the cost of credit for small entities." Second, the CFPB is required to examine "significant alternatives to the proposed rule which accomplish the stated objective of applicable statutes and which minimize any increase in the cost of credit for small entities." Third, the CFPB is to consider the "advice and recommendations" from small entities (5 U.S.C. § 603(d)). This directive serves an important function. When Congress passed the *Dodd-Frank Act*, it expected the newly established CFPB to be a proactive regulatory body. NAFCU believes the decision to subject the CFPB to SBREFA was a conscious decision to help ensure that regulations, promulgated with large entities in mind, do not disproportionately impact small financial institutions that were not responsible for the financial crisis.

Legislative Changes to Dodd-Frank and the CFPB

NAFCU also supports measures to bring greater accountability and transparency to the CFPB by making structural improvements to the agency. A key element of this reform would be to enact H.R. 1266, the *Financial Product Safety Commission Act of 2015*, which would replace the sole director of the agency with a bipartisan five-person commission (as was initially proposed for the agency). Such a move should help improve CFPB rulemaking by ensuring debate and discussion about proposals that can incorporate multiple viewpoints. It can also help address the issue of streamlining the issuance of new rules, by establishing a public meeting agenda.

There are also a number of other areas where reforms can be made to provide relief to credit unions:

Qualified Mortgages

The Qualified Mortgage Rule (QM) is a prime example of a well-intentioned regulation with unintended consequences. QM and the associated ability-to-repay rule were meant to protect borrowers from mortgages they could not afford. However, because the rule was written in a one-size-fits-all manner it has significantly limited access to a variety of mortgage products that could be tailored to individual borrowers. For example, we no longer offer non-QM loans at Dixies FCU. In addition to pressure from our examiners urging us to strictly limit any home loan, we decided the liability risk simply wasn't worth it. This has resulted in our mortgage portfolio shrinking from 60% prior to the crisis to 30% today. Despite a strong track record, we are making fewer mortgage loans in north eastern South Carolina today, than we did before Dodd-Frank due to this regulatory pressure.

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. NAFCU would support the changes below, whether made legislatively or by the Bureau, 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.

Loans Held in Portfolio

NAFCU supports legislation exempting mortgage loans held in portfolio from the QM definition as the lender already assumes risk associated with the borrower's ability-to-repay. Credit unions have historically been portfolio lenders, providing strong incentives to originate quality loans that are properly underwritten. Additionally, credit union charge off rates are incredibly low compared to market averages, suggesting that loans held in portfolio are less likely to become delinquent or go into default.

Points and Fees

NAFCU strongly supports bipartisan legislation (H.R. 685) to alter the definition of “points and fees” under the “ability-to-repay” rule. H.R. 685 has passed the House and awaits Senate action. Under the bill, affiliated title charges and escrow charges for taxes and insurance would be exempted from the calculation of “points and fees.” Under current law, points and fees may not exceed three percent of a loan amount for a loan to be considered a qualified mortgage. Services provided to the consumer, our members, from an affiliated company count against the three percent cap. Unaffiliated services do not count against that cap. Oftentimes, when affiliated services are used, the consumer can save closing costs on their mortgage. However, the current definition does not recognize this consumer advantage.

In addition to the exemptions provide for in H.R. 685, NAFCU supports exempting from the QM cap on points and fees the double counting of loan officer compensation, lender-paid compensation to a correspondent bank, credit union or mortgage brokerage firm, and 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 available in the future.

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.

Regulation E

As NAFCU outlined in our "Top Ten" list of regulations to eliminate or amend in order to better serve credit union customers, the requirement to disclose account numbers on periodic statements should be amended in order to protect the privacy and security of consumers.

Under Regulation E §205.9(b)(2), 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. Placing both the consumer's full name and full account number on the same document puts a consumer at great risk for possible fraud or identity theft.

NAFCU has encouraged the CFPB to amend Regulation E to allow financial institutions to truncate account numbers on periodic statements. This modification is consistent with 12 C.F.R. § 205.9(a)(4), which allows for truncated account numbers to be used on a receipt for an electronic fund transfer at an electronic terminal. This change is also consistent with §605(g) of the Fair Credit Reporting Act that states, "no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt." NAFCU believes that by adopting this change, the CFPB will allow financial institutions to better protect the security and confidentiality of consumer information.

Compromised accounts are not only dangerous for consumers, but can be extremely costly for credit unions. In the past year alone data breaches have cost the credit union industry millions of dollars. According to feedback from our member credit unions, in 2013 each credit union on average experienced $152,000 in loses related to data breaches. The majority of these costs were related to fraud losses, investigations, reissuing cards, and monitoring member accounts. At Dixies, we have had to purchase a new cyber security insurance policy and spend thousands on addressing card fraud issues.

As the recent high-profile data breaches at some of our nation's largest retailers have highlighted, criminals are willing to go to great extremes to obtain consumer's sensitive financial information. Credit unions understand the importance of steadfastly protecting their member's confidential account information, which is why we strongly suggest this regulatory update.

Until Congress passes new legislation, such as H.R. 2205, the *Data Security Act of 2015,* to ensure other third parties, such as merchants, who have access to consumer's financial information, have effective safeguards in place to protect consumer information, the CFPB should consider this minor modification to Regulation E. This change would go a long way in keeping sensitive financial information out of the hands of criminals and reduce the increasing fraud costs borne by credit unions and other financial institutions.

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. At Dixies FCU we decided to avoid the headache of the new burdens associated with the changes and simply run our members' remittance transfers through a third party vendor. 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 their remittance programs.

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, in its proposal, the Bureau is also contemplating adding additional items of information to the HMDA dataset. NAFCU has urged 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 urged 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.

TILA/RESPA

Dodd-Frank directed the CFPB to combine the mortgage disclosures under the *Truth in Lending Act* (TILA) and *Real Estate Settlement Procedures Act* (RESPA). Under this mandate, the Bureau, in November 2013, released the integrated disclosures rule (TRID). 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 set to be effective October 3, 2015, but lenders are still feeling pressure to be compliant on time as the CFPB has not indicated that they will provide a safe harbor grace period, and has prohibited early compliance so that institutions can test their systems. 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. In addition to this new disclosure, credit unions must comply with the current disclosure requirements, which are extensive. After failed attempts to obtain a legislative safe-harbor from TRID compliance we asked for clear guidance from the regulators.

NCUA stated that they recognize that the TRID Rule poses “significant implementation challenges” for industry, and has indicated that regulators will be sensitive to the good-faith efforts of lenders to comply with the TRID rules in a timely manner. While this is not the perfect solution, it will hopefully lead to the industry and examiners working together to ensure expectations are clear. We would also encourage Congress to address this issue further by passing H.R. 3192, the *Homebuyers Assistance Act*.

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 if it’s regulations. While legal opinion letters don’t carry the weight of law, they do provide guidance on ambiguous section 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 declined 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.

NCUA's Risk-Based Capital Proposal: A Solution in Search of a Problem

Credit unions are not immune to regulatory creep from the *Dodd-Frank Act*. One of the central themes of Dodd-Frank was the concept of higher capital requirements for riskier activities for banks. Bank regulators would establish certain capital levels institutions must retain, otherwise they would face prompt corrective action from the regulator to restore the institution to that level. The *Federal Credit Union Act* (FCUA) requires the NCUA Board to adopt by regulation a system of prompt corrective action for federally insured credit unions that is "comparable to" the *Federal Deposit Insurance Act*. The Federal Deposit Insurance Corporation modernized its risk-based capital system post Dodd-Frank in 2013.

Despite the fact that credit unions had a stellar track record of performance during the financial downturn, in January of 2014, the National Credit Union Administration (NCUA) Board proposed a new risk-based capital system for credit unions. On January 15, 2015, the National Credit Union Administration (NCUA) Board, in a 2-1 vote, issued a revised risk-based capital proposed rule for credit unions after a lot of industry and Congressional concern was expressed regarding the first proposal. We were encouraged to see that the revised version of this proposal addresses some changes sought by our membership. However, NAFCU maintains that this costly proposal is unnecessary and will ultimately unduly burden credit unions and the communities they serve.

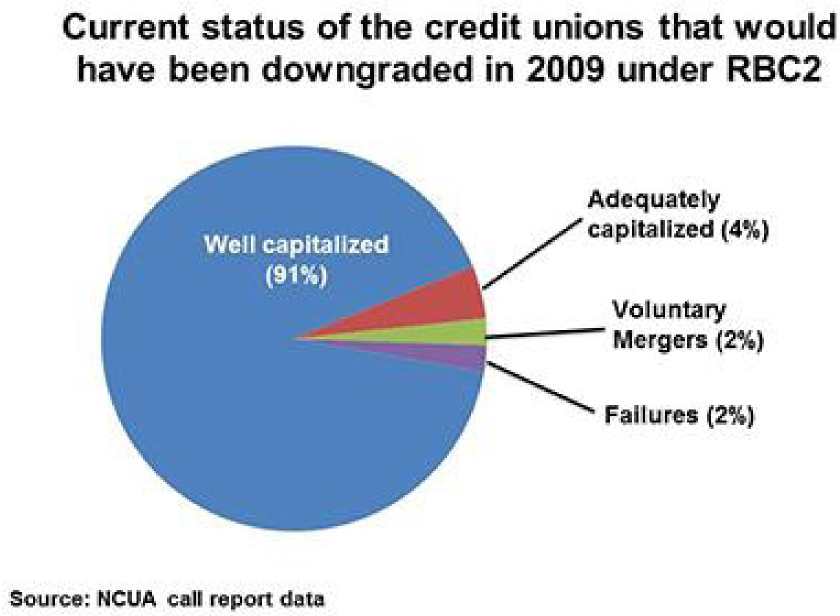
A Costly Experiment for Credit Unions

While this proposal is only designed to apply to credit unions over $100 million in assets, NAFCU and its member credit unions remain deeply concerned about the real cost of this proposal. NAFCU's analysis estimates that credit unions' capital cushions (a practice encouraged by NCUA's own examiners) will suffer over a $470 million hit if NCUA promulgates separate risk- based capital threshold for well capitalized and adequately capitalized credit unions (a "two-tier" approach). Specifically, in order to satisfy the proposal's "well-capitalized" thresholds, today's credit unions would need to hold at least an additional $729 million. On the other hand, to satisfy the proposal's "adequately capitalized" thresholds, today's credit unions would need to hold at least an additional $260 million. Despite NCUA's assertion that only a limited number of credit unions will be impacted, this proposal would force credit unions to hold hundreds of millions of dollars in additional reserves to achieve the same capital cushion levels that they currently maintain. A majority of credit unions responding to a survey of NAFCU members expect that this new proposal will force them to hold more capital in the long run and almost as many also believe it will slow their growth. The funds used to meet these new onerous requirements are monies that could otherwise be used to make loans to consumers or small businesses and aid in our nation's economic recovery. The requirements in this proposal will serve to restrict lending to consumers from credit unions by forcing them to park capital on their books, rather than lending to their members.

Impact Analysis

NCUA estimates that 19 credit unions would be downgraded if the new risk-based proposal were in place today. NAFCU believes the real impact is best illustrated with a look at its implications during a financial downturn. Under the new proposal, the number of credit unions downgraded more than doubles during a downturn in the business cycle. Because the nature of the proposal is such that, in many cases, assets that would receive varying risk weights under the proposal are grouped into the same category on NCUA call reports, numerous assumptions must be made to estimate impact.

Under our most recent analysis, NAFCU believes 45 credit unions would have been downgraded during the financial crisis under this proposal. Of those 45, 41 of credit unions would be well-capitalized today. To have avoided downgrade, the institutions would have had to increase capital by $145 million, or an average $3.2 million per institution. As the chart on the next page demonstrates, almost all of the credit unions that would have been downgraded—95%—are well capitalized or adequately capitalized today. This provides strong evidence that NCUA's risk-based capital proposal is unnecessary and unduly burdensome.



Legislative Change

NAFCU wants to be clear – we support an risk-based capital system for credit unions that would reflect lower capital requirements for lower-risk credit unions and higher capital requirements for higher-risk credit unions. However, we continue to believe that Congress needs to make statutory changes to the *Federal Credit Union Act* in order to achieve a fair system. Such a system should move away from the static net-worth ratio to a system where NCUA joins the other banking regulators in having greater flexibility in establishing capital standards for institutions. We also believe that capital reform must include access to supplemental capital for all credit unions.

NAFCU has outlined a legislative solution that will institute fundamental changes to the credit union regulatory capital requirements in our Five-Point Plan for Regulatory Relief. The plan, as it relates to capital reform:

- Directs the NCUA to, along with industry representatives, conduct a study on prompt corrective action and recommend changes;
- Modernizes capital standards to allow supplemental capital, and direct the NCUA Board to design a risk-based capital regime for credit unions that takes into account material risks; and,

- Establishes special capital requirements for newly chartered federal credit unions that recognize the unique nature and challenges of starting a new credit union.

Recognizing that a number of questions remain regarding NCUA's risk-based capital proposal, on June 15, 2015, Representatives Stephen Fincher, Denny Heck and Bill Posey introduced the *Risk-Based Capital Study Act of 2015* (H.R. 2769). This NAFCU-backed legislation will stop NCUA from moving forward with their second risk-based capital proposal until completing and delivering to Congress a thorough study addressing NCUA's legal authority, the proposal's impact on credit union lending, capital requirements for credit unions compared to other financial institutions and more. The agency would not be able to finalize or implement the proposal before 120 days after the report goes to Congress. We urge members to support this legislation.

Credit Unions Want to Help Small Businesses Recover

When Congress passed the *Credit Union Membership Access Act* in 1998, it put in place restrictions on the ability of credit unions to offer member business loans (MBLs). Congress codified the definition of an MBL and limited a credit union's member business lending to the lesser of either 1.75 times the net worth of a well-capitalized credit union or 12.25 percent of total assets.

As the country continues to recover from the financial crisis, many credit unions have capital to help small businesses create jobs. However, due to the outdated and arbitrary MBL cap, their ability to help stimulate the economy is hampered. Removing or modifying the cap would help provide economic stimulus and create jobs without using taxpayer funds to do so.

A 2011 study commissioned by the Small Business Administration's (SBA) Office of Advocacy that looked at the financial downturn found that bank business lending was largely unaffected by changes in credit unions' business lending, and credit unions' business lending can actually help offset declines in bank business lending during a recession (James A. Wilcox, *The Increasing Importance of Credit Unions in Small Business Lending*, Small Business Research Summary, SBA Office of Advocacy, No. 387 (Sept. 2011)). The study shows that during the 2007-2010 financial crisis, while banks' small business lending decreased, credit union business lending increased in terms of the percentage of their assets both before and during the crisis.

In June of 2015, the NCUA Board proposed changes to their member business lending rules that would eliminate the unnecessarily bureaucratic process currently in place for credit union member business loans that requires credit unions to seek NCUA approval (or a “waiver”) for basic and routine lending decisions. It is important to recognize that NCUA’s proposed MBL rule would provide regulatory relief, but does not alter the statutory cap on credit union member business lending established in the *Federal Credit Union Act* and is not an attempt to circumvent Congressional intent. This statutory cap imposes an aggregate limit on an insured credit union's outstanding MBLs and the proposed rule does nothing to change that. Second, NCUA’s proposal does not alter the requirement that credit unions have strong commercial lending underwriting standards.

Credit unions ultimately need Congress to provide relief from the arbitrary cap. A few bills have been introduced in this Congress to do that:

Representatives Ed Royce and Greg Meeks introduced H.R. 1188, the *Credit Union Small Business Jobs Creation Act*. This legislation would raise the arbitrary cap on credit union member business loans from 12.25% to 27.5% of total assets for credit unions meeting strict eligibility requirements

Additionally, NAFCU supports legislation (H.R. 1133) introduced by House Veterans Affairs Committee Chairman Jeff Miller to exempt loans made to our nation’s veterans from the definition of a member business loan. We also support H.R. 1422, the *Credit Union Residential Loan Parity Act,* introduced by Representatives Royce and Jared Huffman, which would exclude loans made to non-owner occupied 1- to- 4 family dwelling from the definition of a member business loan and legislation.

Furthermore, NAFCU also supports exempting from the member business lending cap loans made to non-profit religious organizations, businesses with fewer than 20 employees, and businesses in “underserved areas.”

Providing credit unions regulatory relief, and enacting these MBL proposals, would help credit unions maximize their ability to provide capital to our nation's small businesses.

Conclusion

The *Dodd-Frank Act* has had a significant impact on credit unions, despite credit unions not being the cause of the financial downturn. Unfortunately, small credit unions like mine are disappearing post Dodd-Frank at an alarming rate as they cannot keep up with the new regulatory burdens. While the CFPB has tried to address the issue with limited exemptions, they have not gone far enough. Many credit unions are saying "enough is enough" when it comes to the overregulation of the industry. 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. Those that do are forced to cut back their service to members due to increased compliance costs. Credit unions want to continue to aid in the economic recovery, but are being stymied by this overregulation. We need regulatory relief – both legislatively and from the regulators.

We would urge members support for credit union relief measures pending before the House and the additional issues outlined in NAFCU's Five Point Plan for Credit Union Regulatory Relief and NAFCU's "Top Ten" list of regulations to review and amend. Additionally, Congress needs to provide vigorous oversight of the CFPB and NCUA, particularly concerning their proposed risk-based capital rule and be ready to step in and stop the process so that the impacts can be studied further. Finally, the subcommittee 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.