America's Credit Unions

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

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

Re: Today's Hearing: "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress"

Dear Chairman Brown and Ranking Member Scott:

On behalf of America's Credit Unions, I am writing regarding the Committee's hearing entitled, "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress." America's Credit Unions is the voice of consumers' best option for financial services: credit unions. We advocate for policies that allow the industry to effectively meet the needs of their over 142 million members nationwide.

Credit unions are the original consumer financial protectors. Because of the not-for-profit, member-owned cooperative structure, credit unions are not subject to the same profit-first motives that have become characteristic of other financial services providers. This distinction, combined with a track-record of providing consumer-friendly financial services, is a key reason that rules and regulations should be tailored so they are not overly burdensome on credit unions.

Both of our legacy associations have long held the position that, given the broad authority and awesome responsibility vested in the Consumer Financial Protection Bureau (CFPB or Bureau), a five-person commission has distinct consumer benefits over a single director. Regardless of how qualified one person may be, including the current director of the agency, a commission would allow multiple perspectives and robust discussion and debate of consumer protection issues throughout the decision-making process. Additionally, a commission helps ensure some continuity of expertise and rulemaking. The current single director structure can lead to uncertainty during the transition from one Presidential administration to another. The U.S. Supreme Court's decision in *Seila Law v. the Consumer Financial Protection Bureau* further amplified this reality when it held that the single director, removal only for "just cause" structure of the CFPB to be unconstitutional. It is with this in mind that we urge Congressional action on legislation to transform the structure of the CFPB from a single director to a bipartisan commission.

Unfortunately, under the current structure, the CFPB has missed many opportunities to leverage credit unions' mission and history to the benefit of consumers and finalized regulations that ultimately hampered credit unions and their members. Consumers lose when one-size-fits-all

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rules force credit unions to pull back safe and affordable options from the market, pushing consumers into the arms of entities engaged in the very activities the CFPB's rules were designed to curtail. Under Director Rohit Chopra's leadership, the Bureau has yet again missed numerous opportunities to recalibrate its approach to regulation in a manner that fulfills its consumer protection mission without impeding consumers' access to credit and safe and affordable financial products and services.

We would like to take this opportunity to highlight for Congress several key principles we believe should guide any CFPB action. These principles were developed in consultation with our member credit unions.

Use the Bureau's authority in a manner consistent with the spirit of the Dodd-Frank Act and continue to monitor and expand oversight of unsupervised entities

Congress created the CFPB specifically to address the irresponsible lending and banking practices of large too-big-to-fail banks and unregulated sectors of the consumer financial services marketplace. Additionally, in recent years, the rise of unsupervised fintech companies has changed the competitive landscape for consumer financial services. These entities are where the Bureau should dedicate most of its time and resources. If the Bureau spent fewer resources on regulating and supervising credit unions and other small lenders already subject to federal prudential regulation, then it would have more bandwidth to focus on the businesses actively engaged in objectionable practices that exploit consumers. We believe this balance can be accomplished without sacrificing important consumer protections. Although there remains much more to be done, the Bureau has recently taken a first step toward responding to credit unions and achieving this balance by focusing on the activities of Big Tech and fintech companies in the payments space as well as buy-now-pay-later (BNPL) providers offering short-term credit to consumers for online purchases. We appreciate the Bureau's recognition of the risks posed to consumers by these large players and urge Director Chopra to continue to utilize its authority to prioritize oversight of unsupervised and under-supervised entities in the market for consumer financial products and services.

Credit unions remain one of the most heavily regulated entities in the country, even though they did not engage in the anti-consumer practices that caused the financial crisis. Despite our pro-consumer history, credit unions have repeatedly been lumped in with others through the promulgation of overly broad rulemakings, increasing compliance costs without a material benefit for consumers. In fact, the increasing cost and complexity of regulatory compliance remains a contributing factor in the significant consolidation taking place among community-based financial institutions. Ultimately, consumers lose when fewer choices are available in the marketplace, resulting in a higher cost of financial services and reduced access to local community-based providers focused on relationship banking.

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Appropriately tailor regulations to reduce disruption for community-based financial institutions

In the wake of the financial crisis, Congress contemplated the need for exemptions to certain rules and crafted the Dodd–Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) to authorize the Bureau to tailor its rules to avoid adverse outcomes for consumers and regulated entities. Congress deliberately provided this express authority in Section 1022 of the Dodd-Frank Act:

*The Bureau, by rule, may conditionally or unconditionally exempt **any class of covered persons**, service providers or consumer financial products or services from any provision of this title, or from any rule issued under this title (Emphasis added).*

These words are unambiguous, and Congress clearly granted the Bureau broad authority to tailor regulations in a manner consistent with the best interest of consumers. We appreciate that the Bureau has used its Section 1022 authority in some rulemakings to create exemptions based on asset size, loan volume, the merits of a specific product, or other factors. However, we believe the Bureau should use its exemption authority more consistently and to greater effect.

Credit unions and credit union service organizations (CUSOs) should be considered for and receive appropriate exemptions from some of the Bureau's regulatory requirements. It is critically important for the Bureau to understand that credit unions are not asking to be exempt from all of its rules; instead, we are asking the Bureau to carefully consider the downstream impact of its rules and how those rules—without appropriate tailoring—could negatively affect the ability of consumers to access financial products and services from reputable, community-based financial institutions.

Be consistent and transparent during the development and implementation of rulemakings and supervision and enforcement policies

The current CFPB structure vests substantial authority with the Director. It is critical for the CFPB Director to avoid disrupting the efficient functioning of markets due to unnecessary secrecy, surprise regulation, "gotcha" enforcement, or the pursuit of political goals. Often, it is consumers themselves that are negatively affected by opaque, abrupt, or extreme changes in policy from one administration to the next.

We believe the CFPB should emphasize regular and open communication with financial services providers and be transparent during the policymaking process. An open communication posture would generate goodwill with industry and further both consumer protections and proper due process. To that end, we are ready and willing to assist in communicating and amplifying any critical information from the Bureau to credit unions and their members. We are also at the Bureau's disposal to solicit feedback from our members, as stakeholder input is critical to an efficient and effective regulatory environment.

Relatedly, we encourage the Bureau to regularly conduct reviews of its regulations in the interest of streamlining and eliminating outdated or superfluous requirements, increasing the efficiency of rules, or to provide exemptions where appropriate. However, it is critical that the Bureau keep in mind that any change in regulation—even a change intended to reduce complexity—always comes with a cost. For most Bureau rulemakings, the Dodd- Frank Act and the Regulatory Flexibility Act provide specified review processes intended to assist in identifying necessary or appropriate regulatory changes after the rule has been "in the field" for a reasonable time period. Therefore, the Bureau should reserve the adoption of substantial changes to rules or policies for cases where there are compelling data-based reasons for doing so or an imminent need that addresses a specified consumer impact.

Consult with the NCUA during the policymaking process and avoid implementing duplicative or contradictory policies

Throughout their history, credit unions have been supervised by several different federal agencies. The lesson that comes through clearly, based on these different supervisory arrangements, is that credit unions are best positioned to succeed when policy decisions affecting them are made by a regulatory agency that has significant familiarity with the characteristics that differentiate them from other financial services providers. The National Credit Union Administration (NCUA or agency), due to its half-century of experience regulating credit unions, has a special understanding of the credit union model as well as the environmental and operational challenges credit unions face daily. For that reason, the CFPB should work more closely with the NCUA throughout the policymaking process and avoid implementing policies that conflict with or are duplicative of those issued by the agency, especially regarding examinations.

Provide certainty to regulated entities by adopting clear "rules of the road" and abiding by statutorily mandated feedback processes

For the last decade and a half, we have seen a massive increase in new consumer financial services regulations. This environment is particularly burdensome for credit unions which, unlike big banks, do not have scores of legal experts in-house to assist with compliance questions. Given the heightened nature of the regulatory landscape, it is important that the Bureau provide certainty to regulated entities through the adoption of clear "rules of the road," internal consistency from the Director's office down to the field examiners, and robust guidance and implementation support.

In that spirit, we encourage the Bureau to provide helpful compliance resources, especially interactive webinars on final rules and Small Entity Compliance Guides, that help stakeholders understand regulatory expectations. We also encourage the Bureau to be proactive and continue providing additional compliance resources after rules are finalized as questions in need of clarification are identified. For example, the Bureau's recent implementation of an Advisory Opinion program is a positive development and should be maintained.

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Regarding clarity, we oppose the Bureau adopting a "regulation by enforcement" approach to policymaking. Moreover, the Bureau's recent reliance on blog posts, guidance, and even amicus brief filings to issue proclamations regarding the application of consumer financial protection laws is inappropriate and denies stakeholders the opportunity to participate in the statutorily mandated notice and comment process. If the Bureau wants to make actionable policy, then it should consider proposing clear regulations pursuant to the Administrative Procedure Act (APA) process instead of using its enforcement authority against financial institutions expecting the subsequent consent order to serve as a means for others to determine what practices are in violation of the law. We also caution against an unproductive and inflammatory "regulation by press release" approach to governance characterized by clearly politicized press releases intended to serve as a bully pulpit.

Conduct thorough research prior to the adoption of a new rule or policy and base policy decisions on relevant data

The Bureau prides itself on being a modern, data-driven regulator. Former Director Cordray often referred to the data beneath consumer complaints as the Bureau's "compass," playing a key role in identifying and prioritizing the Bureau's actions, including in the realm of rulemakings. However, data for data's sake is insufficient, and it is critical that the Bureau's policy and regulatory decisions be wholly supported by relevant, timely, and representative data that captures the entire industry and not just the largest banks. Unfortunately, it has been common for a CFPB rulemaking to lack (or at least appear to the public to lack) sufficient evidence, data, research, or other information to substantiate assertions within the rulemaking. The Bureau has also refused, in certain instances, to publicly share the data upon which it relies to justify a rulemaking—in direct contravention to its obligations under the APA. We challenge the CFPB to set a new standard for evidence-based rulemaking decisions and processes.

It is critical that the Bureau base its decisions on data specific to the entities it intends to regulate through an action. For example, relying on bank data to justify a rulemaking that also covers credit unions without evaluating credit union-specific data is misguided. Almost equally critical is that the Bureau be wholly transparent in its reliance on data, ensuring the public has access to the same information—absent confidential and personally-identifiable information—the Bureau relies on as a foundation of its rulemakings.

Ensure continued access to credit from reputable providers

Credit unions often provide the safest and most affordable loan options for consumers in need of credit. When developing rulemakings overseeing lending, the Bureau should carefully evaluate and consider the impact a policy decision may have on the availability of credit for consumers, especially when the action is likely to impact the cost of credit. For example, we have asked the Bureau to more closely evaluate the inevitably negative impact that its recent proposed rule on overdraft is going to have on smaller institutions below the $10 billion asset threshold for compliance as well as the consumers and communities they serve. It is important that the CFPB strike an appropriate balance between its consumer protection mission and the availability

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of products and services. This balance is critical whether the product is a mortgage, credit card, or emergency loan. Many consumers rely on access to credit to manage their everyday finances and the Bureau should ensure reputable providers, especially community-based providers, are able to meet those needs.

Encourage and support innovation in the consumer financial services marketplace

Innovation, through technology and other creative solutions, has the potential to enhance the delivery and quality of financial products and services to consumers. In recent years, credit unions have been at the vanguard of innovation as a byproduct of their cooperative nature, member-driven focus, and relatively small size. Consumers benefit when financial institutions are provided with more opportunities, under the careful oversight of regulators, to pursue fresh answers to traditional questions. For this reason, America's Credit Unions supports the CFPB revitalizing its approach to innovation by revisiting decommissioned programs like the revised Trial Disclosure Program, the No-Action Letter Policy, and the regulatory "sandbox" policy. We were disappointed by the CFPB's announcement to eliminate these functions of its former Office of Innovation; however, we appreciate the Bureau's new focus on better understanding how big players are squeezing out smaller players. The Bureau should not approach innovation in a manner that places traditional depository institutions at a disadvantage compared to other business models, so we encourage the Bureau to continue evaluating means of leveling the playing field.

Additional Issues of Concern for Credit Unions

Mislabeled Junk Fees

The cooperative structure of credit unions ensures earnings—including fee income—are returned to members in the form of lower interest rates on loans, higher interest on deposits, and lower fees. In fact, credit unions exist only to serve their members, and the relationship between credit unions and their members is fundamentally stronger than the relationship other financial service providers have with their customers.

The CFPB and the Administration have repeatedly classified a broad range of ordinary fees in the consumer financial services market as so-called "junk fees" obscuring the true cost of financial services.[1] In the press release for the credit card late fees proposal, Director Chopra went so far as to say "[o]ver a decade ago, Congress banned excessive credit card late fees, but

[1] *See* Consumer Financial Protection Bureau, Junk Fees Landing Page, *available at* https://www.consumerfinance.gov/rules-policy/junk-fees/. *See also* Consumer Financial Protection Bureau, Blog Post, "The hidden cost of junk fees" (Feb. 2, 2022), *available at* https://www.consumerfinance.gov/about-us/blog/hidden-cost-junk-fees/. *See also* Consumer Financial Protection Bureau, Blog Post, "As outstanding credit card debt hits new high, the CFPB is focusing on ways to increase competition and reduce costs" (Apr. 17, 2023), *available at* https://www.consumerfinance.gov/about-us/blog/credit-card-debt-hits-new-high-cfpb-is-focusing-on-ways-to-increase-competition-and-reduce-costs/. *See* White House (@whitehouse), Instagram, "The Biden-Harris Administration is taking action to get lots of these fees under control." (The picture shows "Credit Card Late Fee $31.00 in a list of other "junk fees" Mar. 3, 2023.)

companies have exploited a regulatory loophole that has allowed them to escape scrutiny for charging an otherwise illegal junk fee."[2] A legally established safe harbor is not a "regulatory loophole" and this government-wide effort to characterize all fees as "junk fees" appears to be little more than a convenient public relations tactic intended to divert the public's attention away from the ever-increasing cost of everyday goods and services arising out of an environment of high inflation and other economic pressures. We strongly object to the government's inflammatory messaging as it is intentionally misleading and clearly wrong-headed. To be clear, credit unions do not assess "junk fees."

In multiple press releases, the CFPB has attempted to lump together fees levied in truly opaque markets outside of the Bureau's jurisdiction with the clearly disclosed, heavily regulated financial institution fees that are incurred in direct response to specific actions (*i.e.*, a late payment). For example, in launching its junk fee initiative the Bureau highlighted that "hotels and concert venues advertise rates, only to add 'resort fees' and 'service fees' after the fact."[3] While that may be a true assessment of fees in the entertainment and leisure industries, in the consumer financial services market fees are clearly governed by robust disclosure requirements that prevent "surprise" fees after the fact.

It is especially perplexing that the Bureau would choose to characterize nearly all fees as "hidden" when most of the rules governing bank and credit union fees are either promulgated or administered by the CFPB itself. In particular, Regulation Z specifically requires disclosures, at application or solicitation, outlining the amount of and circumstances resulting in fees for a consumer's credit card account. Similarly, Regulation E requires disclosures, before account opening, of all fees associated with other consumer accounts. These regulations are actively administered by the Bureau, including the precise scope and timing of the disclosures. These two examples, while not nearly comprehensive, reveal the extensive network of legal protections created precisely to prevent these fees from being "hidden" from consumers, as the Bureau alleges.

America's credit unions stand as the epitome of consumer protection in practice. As part of our member-owned structure, credit union members can rely on fair and equitable treatment by their credit union because they have a voice and a vote in its operation. This fairness extends to the level of fees charged in exchange for services or as a penalty.

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[2] Press Release, Consumer Financial Protection Bureau, "CFPB Proposes Rule to Rein in Excessive Credit Card Late Fees" (Feb. 1, 2023), *available at* https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-rein-in-excessive-credit-card-late-fees/.

[3] Press Release, Consumer Financial Protection Bureau, "Consumer Financial Protection Bureau Launches Initiative to Save Americans Billions in Junk Fees" (Jan. 26, 2022), *available at* https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-launches-initiative-to-save-americans-billions-in-junk-fees/.

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Overdraft Rule

One of the most recent attacks on well-disclosed, regulated fees is the CFPB's proposed rule to amend Regulations E and Z, specifically as it relates to updating regulatory exceptions for overdraft credit provided by financial institutions with more than $10 billion in assets. Credit unions offer services tailored to assist their members in managing their finances effectively. They provide various options to cover instances where members unintentionally or intentionally overdraft their accounts, including checks, automatic payments, and debit card transactions. The proposed rule's requirement to treat overdraft services as extensions of credit subject to Regulations E and Z, unless fees are nominal and only cover applicable costs and losses, although not directly applicable to smaller institutions, may force many smaller credit unions to significantly alter or eliminate these services. As regulatory mandates reduce or remove the prevalence of overdraft services for the largest financial institutions, market pressures will necessitate that smaller credit unions alter their overdraft programs in response. Without the ability to benefit from the same economies of scale that might allow larger institutions to weather a reduction in fee revenue, these changes could make it unsustainable for smaller institutions to offer overdraft protection, disproportionately affecting those who rely on it the most.

All 4,700 credit unions across the country are unique and serve their fields of membership in the best way they see fit for the benefit of their communities. We believe that financial institutions should retain the flexibility to set fees for services like overdraft protection. This flexibility allows them to tailor our services to the needs of our diverse membership, balancing the need to cover costs and manage risk with the commitment to keeping our products and services affordable. A blanket approach in which above breakeven overdraft is deemed open-ended credit does not account for the downstream impacts to smaller institutions and the unique circumstances of our credit union and varied needs of their members.

Instead of imposing restrictive fee structures, we advocate for a greater emphasis on financial literacy and education efforts. Many consumers benefit from overdraft services because they rely on these financial lifelines to pay for purchases during moments of sudden need or between paychecks. Although a small subset of these consumers may become overly reliant on overdraft services, the solution should not be to regulate it out of existence, but rather to help equip consumers with the resources to take control of their financial futures. Several institutions report that some members knowingly want to use this service regularly and have indicated that they are willing to change institutions if it is not available. We believe the focus should be on investing in comprehensive financial education programs that can empower consumers to make informed decisions about their money, reduce reliance on overdraft services, understand other options available, and improve their overall financial health.

America's Credit Unions believes that the proposed rule on overdraft credit may have unintended consequences that could hinder credit unions' ability to serve their members effectively. We urge the CFPB to consider the unique role of smaller financial institutions in promoting financial inclusion and to rescind the rule and support a paradigm that balances

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consumer protection with the need for flexibility and innovation in financial services. Instead of imposing a rule on overdraft fees with industry-wide implications, we encourage the CFPB to support efforts to enhance financial literacy and empower consumers to make informed financial decisions. By working together, we can ensure that all consumers have access to affordable, responsible financial services that meet their needs and support their long-term financial health.

Credit Card Late Fees

We object to the CFPB's final rule to amend Regulation Z to slash credit card late fees from the current limits to $8 for large issuers with over one million open accounts. The rule aims to ensure these late fees are "reasonable and proportional" to assist low- and moderate-income (LMI) borrowers in better managing their debt. However, the rule will instead result in reduced competition in the credit card market, further consolidation among community-based financial institutions, and reduced access to credit for vulnerable and underserved communities. The current regulatory structure and safe harbor limits for credit card late fees have resulted in clear disclosures to consumers, providing ample opportunity for comparison shopping, and a deterrence effect that encourages consumers to make timely payments on their accounts. An $8 late fee does nothing to encourage responsible consumer behavior. It may even encourage greater delinquencies on unsecured credit card portfolios, leading to potential safety and soundness concerns. We would note that various governmental entities, including the federal government, set late fees well above that $8 level for a wide range of payments.

This drastically reduced safe harbor limit is not only arbitrary but is also unlikely to reduce consumer indebtedness. In fact, this rule would have a disproportionate impact on LMI borrowers and those with thin credit files by limiting the availability of safe and affordable products and services. Although the majority of credit unions are not immediately impacted, similar to the CFPB's overdraft proposed rule, there will be a downstream effect on smaller institutions over time due to market pressures and changing consumer expectations. As a result, credit unions and other institutions will be forced to make difficult decisions about their offerings. Some smaller credit unions may be forced to reevaluate or eliminate their credit card programs altogether because the economics no longer work. Credit unions are also unique in that they are subject to an interest rate ceiling established under the Federal Credit Union Act (FCU Act). This statutory limitation further constrains credit unions' revenue options with respect to credit cards, whereas other institutions will likely increase their interest rates to compensate for reduced late fee revenue. We have already seen this trend toward increasing interest rates among larger issuers despite the pending legal challenge against the final rule. If credit unions are forced to tighten their credit criteria or exit the credit card market because of this rule, the impact on underserved communities will be immeasurable.

We encourage you to exercise your oversight over this final rule as the CFPB's data and analysis were cursory at best and the Bureau did not seek the input of small financial institutions as required under the law.

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NSF Rule/UDAAP

The uncertainty surrounding the abusiveness prong of unfair, deceptive, or abusive acts and practices (UDAAP) has been a source of concern for credit unions for many years. The recent proposed rule prohibiting nonsufficient funds (NSF) fees on instantaneously declined transactions puts the logic of the Bureau's 2023 Policy Statement on Abusive Acts or Practices into action, and we are troubled by the Bureau's interpretation regarding the test for abusive conduct. Specifically, that conduct is abusive if it takes unreasonable advantage of a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service. But in the Bureau's interpretation, there is no requirement that the consumer's lack of understanding be reasonable, and the Bureau unreasonably concludes that the fact that a consumer decides to take a risk must necessarily mean that the consumer did not understand the risk.

If a consumer chose to initiate a transaction even though they were uncertain if they had sufficient funds, it does not necessarily mean that they lacked understanding of the risk. It could just as easily mean the consumer understood the risks and chose to initiate the transaction anyway, hoping that their account had sufficient funds. Through this interpretation, the Bureau has removed all responsibility from the consumer and shifted the burden entirely to financial institutions. Furthermore, it has created a situation in which any product or service could be deemed too complex for a consumer to understand, and if a financial institution charges a fee in relation to that product or service, it could be subject to an allegation that it violated the abusiveness prong of UDAAP.

This interpretation will chill innovation and place credit unions in a position where they will be extremely hesitant to offer new products or services to their members, for fear that they might be considered abusive. Smaller credit unions that cannot afford to take the risk of UDAAP enforcements will be incentivized to only offer the most basic services, further reducing their ability to compete.

We urge the Bureau to issue a rulemaking to further define the abusiveness standard and work to ensure an equitable framework that recognizes the role of financial responsibility for consumers as much as it does the responsibility of their financial institution. While any guidance or additional clarity is crucial to providing credit unions with the rules of the road when it comes to UDAAP, a single policy statement with overly broad prohibitions is insufficient. A rulemaking to further define abusiveness through the notice and comment rulemaking process would give financial institutions confidence in the knowledge that an act or practice is or is not abusive and would allow the entities that are governed by UDAAP to better understand their obligations under those prohibitions.

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Regulating New and Emerging Service Providers

Credit unions are concerned that under-regulated and unsupervised nonbank providers are increasingly engaged in financial activities by offering consumer products that cannot be easily examined by regulators on a periodic basis. Some nonbank providers structure their products to limit the applicability of certain consumer protection laws and regulations that have long applied to credit unions and banks. We encourage the Bureau to continue exercising its market monitoring authority to further explore these products and the companies that offer them as they are serving a growing segment of consumers' financed purchases. The Bureau has statutory authority to supervise nonbank covered persons that are "larger participants" in a market for financial products or services and should continue to exercise that authority to ensure that American consumers are protected from under-supervised entities.[4] The Bureau also has the ability to place nonbank covered persons under its supervisory authority on a case-by-case basis pursuant to Section 1024(a)(1)(C) of the Dodd-Frank Act. Disaggregation of payments, lending, and deposit-taking activities without a corresponding update to the Bureau's supervisory posture towards fintech companies could expose consumers to greater risk by making it more difficult to prevent violations of consumer financial law before they occur. Accordingly, we support efforts to establish supervisory expectations for nonbanks that match the rigorous standards applied to credit unions and banks.

While credit unions welcome innovation in the market, we are concerned the exponential growth of alternative financial services products has outpaced prudent regulatory oversight and could ultimately result in consumer harm. In addition, the absence of effective oversight creates an uneven playing field to the material disadvantage of traditional lenders. Credit unions and other well-established financial service providers are heavily regulated for safety and soundness and consumer protection regulatory compliance. Congress and the CFPB should ensure consumer protections always run with a product or service, not with the entity providing the products or service.

Implementation of Section 1033 of the Dodd-Frank Act

Credit unions support consumers' rights to access and control their personal financial data but have a responsibility to ensure credit union members' data remains safe, secure, and private. The CFPB's proposal to implement Section 1033 of the Dodd-Frank Act goes far beyond any reasonable interpretation of the statutory text and imposes substantial costs on credit unions in their capacity as data providers. Numerous technical requirements for API interfaces along with a directive that credit union data providers subsidize third party access to member data will result in an uneven playing field that penalizes credit unions. To date, the CFPB has not indicated a willingness to meaningfully address concerns related to these features of its proposed open banking framework. Instead, the CFPB has forged ahead with its own, arbitrary vision for open banking, disregarding the concerns raised by the small financial institutions during the agency's

[4] *See* 12 U.S.C. 5514(a)(1)(b).

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Small Business Regulatory Enforcement Fairness Act (SBREFA) process, as well as those raised by the Small Business Administration's (SBA) Office of Advocacy.

While the Dodd-Frank Act calls upon the CFPB to promote fair and competitive markets, the plain language of Section 1033 does not reflect an intention to reengineer data sharing mechanisms to alter financial sector competition. Furthermore, the commoditization of financial data driven by the CFPB's idealistic vision for open banking could result in the opposite of its intended effect: rewarding the largest, most technologically sophisticated companies at the expense of credit unions and other community institutions focused on relationship banking.

Credit Reporting

Before issuing a proposed rule to amend Regulation V, which implements the Fair Credit Reporting Act (FCRA), the Bureau should solicit a wide range of stakeholder input and be careful not to substitute its own intent for that of Congress when it originally passed the FCRA. The Bureau's recent efforts to overhaul credit reporting requirements would grossly expand the scope of the FCRA without sufficient detail regarding the specific proposals the Bureau plans to evaluate, which did not provide small entity representatives participating in the SBREFA panel with an opportunity to provide fulsome feedback, including cost estimates regarding the impact of the proposed changes.[5] We have asked the Bureau to issue another outline of proposals, reconvene a SBREFA panel, and issue an advance notice of proposed rulemaking to provide more opportunity for stakeholders to review and comment on the ideas proposed. In the interest of promoting transparency and collecting comprehensive stakeholder feedback to inform rulemaking initiatives, the Bureau should always follow a consistent, data-driven information gathering and rulemaking process.

Credit unions strongly believe that an accurate credit reporting system benefits borrowers and lenders alike. Lenders rely on an accurate and complete record of a borrower's credit situation to make underwriting decisions. Legislative or regulatory actions intended to remove or modify certain types of debt from the credit reporting system will do long-term damage to lending and the ability of borrowers to get the loans they need to buy a home, start a small business, or achieve higher education.

Blanket restrictions on the reporting or consideration of certain debt will prevent lenders from seeing borrowers' complete debt circumstances and cloud lenders' ability to fairly assess borrowers' creditworthiness. An incomplete view of borrowers' credit history reduces lender confidence in credit reports and scores, impacting pricing decisions and credit availability. The borrowers most impacted by the consequences of inaccurate credit reports will be LMI borrowers whose financial well-being could benefit the most from access to affordable credit from a credit union.

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[5] Consumer Financial Protection Bureau, Small Business Advisory Review Panel for Consumer Reporting Rulemaking Outline of Proposals and Alternatives Under Consideration (Sept. 15, 2023), https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rule-sbrefa_outline-of-proposals.pdf.

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In conclusion, we look forward to working with the Committee on the issues outlined here as you exercise your oversight capacity. On behalf of America's Credit Unions and our nation's over 142 million credit union members, thank you for holding this important hearing and considering our views on the subject.

Sincerely,

Jim Nussle, CUDE
President & CEO

cc: Members of the Committee on Banking, Housing, and Urban Affairs

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