



**America's
Credit Unions**

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April 16, 2024

The Honorable Andy Barr
Chairman
Committee on Financial Services
Subcommittee on Financial Institutions
and Monetary Policy
U.S. House of Representatives

The Honorable Bill Foster
Ranking Member
Committee on Financial Services
Subcommittee on Financial Institutions
and Monetary Policy
U.S. House of Representatives

Re: Today's Hearing: "Agency Audit: Reviewing CFPB Financial Reporting & Transparency"

Dear Chairman Barr and Ranking Member Foster:

On behalf of America's Credit Unions, I am writing to you regarding the Subcommittee's hearing entitled, "Agency Audit: Reviewing CFPB Financial Reporting & Transparency." America's Credit Unions represents the country's 4,800 credit unions and their 140 million members. 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 members nationwide.

America's Credit Unions and its members appreciate the Committee's ongoing oversight of the Consumer Financial Protection Bureau (CFPB or Bureau) and efforts to promote financial inclusion and consumer protection. However, as you examine the CFPB, we would like to share areas where we believe reforms would help improve the Bureau's transparency and concerns that we have about CFPB rulemakings which are emerging from the current structure. Credit unions are facing a tidal wave of new regulatory burdens and restrictions, and we welcome this opportunity to share our thoughts on current issues pertinent to the CFPB.

Structure and Funding for the CFPB

America's Credit Unions believes 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, including the current leadership of the agency, a commission would allow multiple perspectives and robust discussion of consumer protection issues throughout the decision-making process. This would add transparency to the rulemaking process, something that is lacking today. 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 highlighted this fact when it released a decision in *Seila Law v. the Consumer Financial Protection Bureau* that found 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. We support legislation that would improve the Bureau by making this change, such as H.R. 1410, the Consumer Financial Protection Commission Act, and H.R. 2798, the CFPB Transparency and Accountability Reform Act.

Additionally, as the Subcommittee examines CFPB transparency, we believe the Bureau currently lacks sufficient accountability and transparency mechanisms as it relates to its funding, which further exacerbates the challenges in assessing its financial and operational performance. As such a large agency overseeing all aspects of the financial sector, we believe that the Bureau's funding should be overseen and established by Congress.

The lack of accountability in the CFPB's structure is reflected in its rulemaking. As noted above, unlike other regulatory agencies run by a bipartisan board or commission that allows for debate and discussion of various impacts of proposed rules, the CFPB continues to be run by a single director who can make decisions on rules. These decisions can occur under political influence. This could mean a wide change in regulations with each new administration that fits a broader political agenda. This inconsistency within the CFPB's structure can lead to rules that are out of touch, poorly constructed, and that may have harmful impacts on both consumers and credit unions, even if unintended. There are several recent efforts that fall into this category.

The CFPB's Initiative on "Junk Fees"

In 2022, the CFPB launched an initiative to target standard fees charged by credit providers that included sensible payment guardrails such as overdraft and credit card late fees. This initiative has been mislabeled, with the CFPB calling lawful payment incentives "junk fees." These fees bear no resemblance to the type of surprise hotel, ticket, and airline fees referenced by others as "junk fees" and, in contrast, are all subject to comprehensive laws and regulations that require clear and conspicuous consumer disclosures. Mislabeling payment incentives for regulated financial products and services will result in credit unions no longer being able to offer services and products to vulnerable communities. Sensible payment guardrails are not unfair, deceptive, or abusive, and there are mechanisms in place to ensure consumers are well-informed of the fees. The CFPB's guidance on these fees falsely suggests that these fees are for the sole benefit of the financial institution; however, these fees are used to help the consumer make responsible financial decisions and encourage on-time payments or avoid violating the terms of financial agreements.

Credit Card Late Fees Rule

One of the best examples of Bureau overreach in the "junk fees" initiative is the CFPB's recent action on credit card late fees. The CFPB's misguided final rule on credit card fees clearly demonstrates a misunderstanding on how credit cards work. Credit unions work to empower their members' decision making and clearly define their late fees to suit the needs of their membership. An \$8.00 late fee does nothing to encourage responsible consumer behavior. We

would note that various governmental entities, including the federal government, set late fees above that \$8.00 level for a wide range of payments.

The goal of the CFPB's rule to amend Regulation Z to reduce credit card late fees is to assist low-and-moderate income (LMI) borrowers to ensure late fees are "reasonable and proportional." In reality, this rule would reduce access to credit and competition in the credit card market. Another unintended consequence of this rule would be further consolidation of community-based financial institutions. The current safe harbor limits and regulatory structure 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.

While the rule includes a new safe harbor limit, it is arbitrary and is unlikely to reduce consumer debt. In fact, this rule would have a disproportionate impact on LMI borrowers by limiting the availability of safe and affordable products because 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 differ from banks in that they are subject to an interest rate ceiling established under the Federal Credit Union Act. While big banks will likely increase interest rates to make up for reduced revenue, credit unions have limited revenue options. The impact on underserved communities will be substantial if credit unions are forced to leave the credit card market.

The result of the unintended consequences of this rule will outweigh any potential positive effects. As such, America's Credit Unions supports Chairman Barr's resolution of disapproval for the Consumer Financial Protection Bureau's (CFPB) credit card late fee rule under the Congressional Review Act.

Overdraft Rule

Another 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. This rule inadvertently undermines the ability of smaller financial institutions like credit unions to offer services such as overdraft protection programs. We have heard from many of our members that they appreciate this service and do not object to paying a fee, as these types of programs are critical to our members' financial well-being. For many individuals, overdraft protection programs serve as a lifeline, bridging the gap between paychecks and covering essential expenses like utilities and groceries. Without this service, they would face increased fees, disrupted services, and financial insecurity.

The rule's requirement to treat overdraft services as extensions of credit subject to Regulations E and Z may force credit unions to significantly alter or eliminate these services and put credit unions at a competitive disadvantage. As regulatory mandates reduce or remove overdraft

services for the largest financial institutions, market pressures will ultimately force smaller credit unions to shift 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. This would disproportionately affect those who rely on it the most.

We believe that credit unions should have the flexibility to set fees for services like overdraft protection to allow them to tailor their services to the needs of their diverse membership, balancing the need to cover costs and manage risk while keeping the cost of services low.

Section 1071 Rule and the Impact on Serving Small Business

It is also important for the CFPB to not harm small businesses or small financial institutions, such as community credit unions. The CFPB's rulemaking on Section 1071 threatens to do that. There is widespread concern that the rule's complexity and significant costs will weigh disproportionately on credit unions in ways that ultimately lead to fewer and less favorable outcomes for all small business borrowers.

The overly broad scope of the CFPB's rule will substantially raise the cost of small business borrowing and would require credit unions to unnecessarily collect detailed data about their small business lending activities, including the race, ethnicity, and gender of the business owners, as well as the size and location of the businesses. Credit unions pride themselves on being trustworthy within the communities that they serve, while maintaining the ability to provide flexible lending options and personalized financial support that empowers small businesses to succeed. The 1071 rule from the CFPB interferes with our ability to serve small business owners with affordable lending products.

Section 1033 Rule

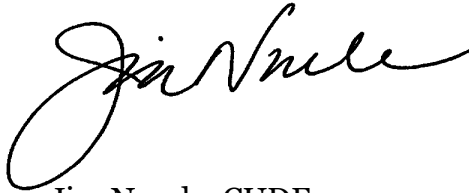
The CFPB's proposed rule to implement Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act also contributes to significant uncertainty about how fraud might propagate through new data sharing mechanisms. Regulatory dictates to compel data sharing with third parties could have broad systemic effects, not only for credit unions, but all financial institutions covered by the CFPB's open banking proposal.

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. However, the CFPB's open banking rulemaking does little to support these core obligations. Instead, the CFPB places the onus of due diligence on credit unions and other covered data providers that must generally acquiesce to nominally authorized third parties seeking access to data. We are concerned that our members' data will be at a higher risk of being compromised since not all third parties will be subject to the regular supervision and regulation that applies to credit unions and other financial institutions.

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On behalf of America's Credit Unions and their 140 million credit union members, thank you for the opportunity to share our views. We look forward to continuing to work with you to create an environment where credit union members can thrive.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Nussle". The signature is fluid and cursive, with a large loop at the beginning.

Jim Nussle, CUDE
President & CEO

cc: Members of the Subcommittee on Financial Institutions and Monetary Policy