



**Testimony of  
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**On Behalf of the Nevada Credit Union League & Credit Union National Association**

**Before The**

**The Committee on Small Business Subcommittee on Investigations, Oversight,  
and Regulations**

**Hearing On**

**Regulatory Overload: The Effects of Federal Regulations on Small Firms.**

Thank you for the opportunity to testify at today's hearing. The Committee's continued focus on the effects of Federal regulations on small businesses is critical. Thank you Chairman Hardy, and to the committee for inviting me to testify today.

My name is Robin Simmers and I am the Chief Executive Officer of Pahrnagat Valley Federal Credit Union located in Alamo, Nevada roughly 100 miles northeast of Las Vegas. I am happy to be here today to share the story of Pahrnagat Valley a \$20 million credit union, and credit unions nationally. Originally chartered in 1958, Pahrnagat Valley FCU services the community in Pahrnagat Valley including the towns of Alamo, Hiko, and Ash Springs. We are the communities only full service financial institution for a population of roughly 3,000.

I am also pleased to come before the committee on behalf of the Nevada Credit Union League, and the Credit Union National Association which represents roughly 6,300 credit unions nationwide and 104 million credit union members. Currently, there are 18 Nevada based and operated credit unions. Credit unions are not-for-profit financial cooperatives, owned by our members who democratically elect our volunteer board of directors. We do not have stock, are not publically traded, and return all profits to our members in various forms. The credit union model of operation is different from others in financial services as our incentives are to serve the needs of our members. Whether serving a small community or a large metropolitan area, there is consistency in the compliance burdens that credit unions are experiencing.

A little bit about Pahrnagat Valley Federal Credit Union: Including myself, the credit union employees 6 full employees serving the financial needs of roughly 2,000 members. Running a small credit union, which is also a small business, presents a variety challenges. With a team of 6, I am not only the CEO and Manager, but I serve as the teller, CFO, COO, HR department, Business Lending Officer, Mortgage Loan Officer and everything in between. Since 2011, our credit union is the only financial services provider for our small town.

Credit unions face a crisis of creeping complexity with respect to regulatory burden and American consumers need Congress to address this crisis. Since the beginning of the financial crisis, credit unions have been subject to more than 202

regulatory changes from nearly two dozen Federal agencies totaling more than 6,000 *Federal Register* pages. Every time a rule is changed credit unions and their members incur costs. They must take time to understand the new requirement, modify their computer systems, update their internal processes and controls, train their staff, design and print new forms and produce material to help their members understand each new requirement. Even simple changes in regulation cost credit unions thousands of dollars and many hours: time and resources that could be more appropriately spent on serving the needs of credit union members.

Regulatory burden is one of the primary reasons that Main Street financial institutions are disappearing at an alarming rate. The number of credit unions has been halved in the last 20 years – from more than 12,500 in 1995 to a little less than 6,300 today.

The good news is that Congress can help relieve the regulatory burdens on credit unions so they can better serve their members. Changes to the *Federal Credit Union Act*, the *Dodd-Frank Act*, and other burdensome laws and regulations will ensure that America's 100 million plus credit union members will continue to benefit from credit union services.

With respect to the *Federal Credit Union Act*, we believe that changes should be made to allow credit unions to fully serve their small business owning members. In addition to credit union member business lending, we suggest other changes to make sure that credit unions are able to focus on their members.

### **Restore Credit Unions' Business Lending Authority**

Congress should restore credit unions' authority to lend to their small business members. No economic or safety and soundness rationale has ever been established for why credit unions should be subjected to a cap on small business lending, and we believe Congress should fully restore credit unions' ability to lend to their small business members, as they did without statutory restriction until 1998.

As we have testified many times before, while the small banks were asking for taxpayer money to lend to small businesses, credit unions were pleading with Congress

to permit well-capitalized credit unions with a strong history of business lending to lend beyond the arbitrary cap on business lending that is in statute.

NCUA has testified in support of expanding the business lending cap several times, most recently in February 2015.<sup>1</sup> The administration has supported expanding the business lending cap.<sup>2</sup> There are more than 500 credit unions for which the cap is a significant operational restriction. These credit unions deserve the opportunity to continue to serve their business members and their communities, and Congress should address this issue.

### Increase the Member Business Lending Cap

If Congress is unable to eliminate the cap entirely, we strongly urge enactment of legislation that has been introduced in the last several Congresses to permit Federally insured credit unions to make member business loans (MBLs) in an aggregate of 27.5% of its total assets as long as the credit union: (a) is well-capitalized; (b) can demonstrate at least 5 years' experience managing a sound MBL program; (c) has had MBLs outstanding equal to at least 80% of 12.25% of its assets; and (d) complies with applicable regulations. We believe this is a reasonable approach that ensures that business lending in excess of the current statutory cap is conducted by healthy credit unions with a demonstrated history of sound business lending practices. While it does not get credit unions back to the place they were prior to 1998 when they were not subject to a statutory cap on business lending, it will provide several hundred credit unions with relief to continue to serve their small business members and their communities.

Importantly, raising the cap in the manner outlined above would increase small business lending by as much as \$4.3 billion, helping to create nearly 50,000 new jobs, in the first year after enactment. This level of growth would have been very helpful in the throes of the financial crisis, but even in the recovering economy, this type of growth is important. And, contrary to the banker argument, this lending would not produce a dollar for dollar reduction in bank lending. In fact, the Small Business Administration

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<sup>1</sup> Testimony of Larry Fazio, Director, Office of Examination and Insurance, National Credit Union Administration, before the Senate Banking Committee Hearing on "Regulatory Relief for Community Banks and Credit Unions." February 10, 2015.

<sup>2</sup> Letter from U.S. Secretary of Treasury Timothy Geithner to House Financial Services Committee Chairman Barney Frank. May 25, 2010.

(SBA) commissioned a study that suggested 80% of additional credit union lending would be new small business lending.<sup>3</sup> This would be a benefit for small business owners and it would not jeopardize the banking industry's share of the small business lending market, which for the last two decades has been approximately 93% of the market.

### Treat 1-4 Family Non-Owner Occupied Residential Loans as Residential Loans, Not Credit Union Business Loans

In addition to legislation to modernize credit union business lending, we encourage Congress to address a disparity in the treatment of certain residential loans made by banks and credit unions. When a bank makes a loan for the purchase of a 1-4 unit non-owner occupied residential dwelling, the loan is classified as a residential real estate loan; however, if a credit union were to make the same loan, it would be classified as a business loan and therefore subject to the cap on member business lending under the *Federal Credit Union Act*.

We support legislation to amend the *Federal Credit Union Act* to provide an exclusion from the cap for these loans. Doing so would not only correct this disparity, but it would enable credit unions to provide additional credit to borrowers seeking to purchase residential units, including low-income rental units. Credit unions would be better able to meet the needs of their members if this bill was enacted, and it would contribute to the availability of affordable rental housing.

### NCUA's Proposed Member Business Lending Rule

On June 18, 2015, the NCUA Board issued a proposed member business lending rule designed to give credit unions greater flexibility and autonomy in offering commercial loans. The rule changes the current prescriptive approach to a more principle-based methodology. While the rule provides more flexibility and autonomy to credit unions, the rule emphasizes sound risk management for commercial lending. The rule does not allow credit unions to evade the member business lending cap nor lend to non-members. We support the overhaul of NCUA's current MBL regulation.

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<sup>3</sup> Wilcox, James A. "The Increasing Importance of Credit Unions in Small Business Lending." Small Business Administration Office of Advocacy. September 2011. 20.

## Improve Credit Unions' Ability to Engage in Small Business Administration and Other Guaranteed Lending Programs

We encourage Congress to improve credit unions' ability to offer SBA and other government guaranteed loans. Specifically, Congress should exempt government guaranteed loans in their entirety from the member business lending cap; currently, only the guaranteed portion of the loan is exempt. Further, Congress should clarify that credit unions participating in Federal and state loan guarantee programs may include terms for such loans as permitted by the loan guarantee programs in both statute and regulations; this would allow credit unions to more fully participate in the SBA's 504 Loan Program.

## Other Potential Changes to the Federal Credit Union Act

### Improve Credit Union Capital Requirements

One lesson of the financial crisis is "capital is king" and the measures used to assess the capital condition of financial institutions were imperfect, to put it mildly. Financial regulators, including NCUA, have worked in recent years to impose "better" schemes to assess the health of financial institutions; NCUA's new risk based capital rule is its latest attempt in this area. While we appreciate some of the changes that were made to the rule, questions persist with respect to whether all aspects of the proposal are consistent with the agency's legal authority, and whether the costs of implementing the proposal outweigh the benefit to the National Credit Union Share Insurance Fund.

We encourage Congress to consider comprehensive reforms to the credit union capital structure, including authorizing NCUA to define what the different net worth levels must be in order to be "well-capitalized," "adequately capitalized," "undercapitalized," and "significantly undercapitalized," based on credit unions' financial performance, current economic trends and other factors.

We also believe that NCUA should have the authority to allow all credit unions to accept supplemental forms of capital. Under current law, approximately 2,000 credit unions, those designated as low-income credit unions, have this authority. Permitting all credit unions to acquire supplemental capital in a manner consistent with their

cooperative ownership structure would enhance the safety and soundness of the credit union system. Representatives King (R-NY) and Sherman's (D-CA) legislation to permit credit unions to accept supplemental forms of capital would be a good place to start regarding credit union capital reform.

### Budget Transparency for the NCUA

We support legislation that requires NCUA to hold an annual hearing on the agency's budget, most of which is funded by credit union member resources. This would increase transparency and accountability at the agency, and engender public trust, thereby strengthening and supporting the agency's mission.

### Suggested improvements to the *Dodd-Frank Act*

The *Dodd-Frank Act* is not and should not be considered sacrosanct. There are several improvements that should be made to the law that, in the long run, would enhance consumer protection by ensuring that credit unions are around to serve their members.

### Expand and Specify the CFPB's Exemption Authority

The CFPB should go much further than it has to exempt credit unions from its rule making, because credit unions, unlike other financial institutions, have not caused the abuse the Bureau is meant to address. The imposition of regulations designed to curb abuse elsewhere in the system reduces access to affordable products and services offered by credit unions. If the Bureau is unwilling to expand its perspective on the exemption authority Congress should state it more explicitly.

### Install a Five-Person Board to Run the CFPB

We encourage Congress to enact legislation to change the leadership structure at the Bureau from a single director to a five-person board. Expanding the Bureau's executive leadership to a five-person board will ensure that more voices contribute to the Bureau's rulemaking and it could help produce regulations that better balance the important mission of the Bureau and the impact the regulations have on the way products and services are provided to consumers.

### Require Cost-Benefit Analysis of all CFPB Proposals

We urge Congress to enact legislation to require the CFPB to complete an extensive cost-benefit analysis before the agency proposes a rule and to provide this analysis to the public with any proposal issued. The burden should be on the Bureau to detail the costs and benefits of its proposals, not on the regulated parties to prove that there is a burden.

### Codify the Credit Union Advisory Council

Shortly after the CFPB was established, the Bureau's leadership announced the creation of a credit union advisory council (CUAC). This group advises the agency on the impact of the Bureau's proposals on credit unions. However, since CUAC is not required by law, it could be abolished at any time. We believe CUAC is an important resource for the agency and also provides a forum for credit union officials to provide direct feedback to the agency on how proposals and final rules will affect credit unions' operations.

### Additional Regulatory Relief Measures

#### Exception to Annual Written Privacy Notice

We support legislation that would eliminate the requirement that credit unions send annual privacy notices to their members unless they have changed their privacy policy. This legislation would not only relieve credit unions of an unnecessary regulatory burden, but it would also enhance consumer protection by making privacy notifications more meaningful to consumers.

### Credit Unions and the Federal Home Loan Bank

When the Federal Home Loan Bank (FHLB) system opened to commercial banks and credit unions in 1989, the bill contained a drafting error which excluded privately insured credit unions. We support current legislation that would fix this discrepancy. Permitting privately insured credit unions to join the FHLB system would pose no risk to the FHLB because all advances from the FHLB system must be fully collateralized and are subject to strict uniformly applied standards.



Another piece of legislation that we support would ensure that the FHLB membership requirements for credit unions under \$1 billion in assets will have parity with similarly sized banks. Currently, banks under \$1 billion in assets only have to retain 1% of their assets in mortgages or mortgage related products vs. credit unions of similar size, which have to retain a much higher threshold of 10% of their assets in mortgages or mortgage related products before they can join the FHLB system.

### Independent Examination Ombudsman

Current legislation would create an independent examination ombudsman that would facilitate transparency and improve consistency in the examination process. We support this legislation because the current process for lodging examination complaints and appeals simply has not worked for credit unions.

### Portfolio Lending and Qualified Mortgages

We support current legislation that would treat mortgages held in portfolio at credit unions and other mortgage lenders as qualified mortgages for purposes of the CFPB's mortgage lending rules. Treating loans that financial institutions hold on their balance sheets in this manner is appropriate because the lender retains all of the risk involved with these mortgages and is subject to significant safety and soundness supervision from its prudential regulator.

### CFPB's TILA-RESPA Integrated Disclosure Rule

Congress is currently considering legislation that would provide a reasonable hold-harmless period for enforcement of the CFPB's TILA-RESPA Integrated Disclosure regulation for those that make good-faith efforts to comply. We appreciate that the Bureau indicated that it will be sensitive to the progress made by those entities that make good-faith efforts to comply. However, credit unions need to know that their good faith efforts to comply while still serving their members' needs does not expose them to litigation.

### Conclusion

Thank you for the opportunity to discuss regulatory burdens facing credit unions. Unfortunately as a result of overregulation, the credit union system is losing a credit

union a day. With the help of your committee we look forward to stemming this tide and continuing to provide the very best service to our members.