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on behalf of

America's Credit Unions

United State Senate Committee on Banking, Housing, and Urban Affairs

Hearing Entitled "Consumer Protection: Examining Fees in Financial Services and Rental Housing"

May 9, 2024

Introduction and Mission

Good morning and thank you for the opportunity to share my story. My name is Karen Madry, and I serve as the President and CEO of Afena Federal Credit Union (Afena), located in Marion, Indiana. We are a federally chartered, low-income designated credit union with $99 million in assets and 3 branches serving over 8,000 members in central Indiana. In 2019 Afena was certified as a Community Development Financial Institution (CDFI). As Grant County's only CDFI, Afena is mission-focused on increasing financial inclusion among the under-served and financially challenged individuals in our community. With the support of our many community partnerships, we continue to develop products, services, and programs that are specially designed to empower low-income and financially underserved people and families and help them enter the financial mainstream.

More than 70 percent of families in Grant County, Indiana, one of the main areas within Afena's field of membership, live below the poverty line and face difficult financial decisions every day. I do not have to imagine the struggles that so many members of my community face – I have experienced them myself. Years ago, having survived an abusive relationship, filing for bankruptcy, and on the verge of homelessness, I once found myself living at the poverty level. Overcoming this adversity through years of hard work and dedication to my community has led me to where I am today – building empathy and trust with the members we serve to ensure they too can avoid future financial pitfalls within their life's journey.

A core part of our mission at Afena is to empower our members through financial education and help them understand how to make wise money management decisions that will have a dramatic impact on their future and their ability to build generational wealth. We want to put our members on a path to financial health and wellbeing so that they can leave a legacy they are proud of for the people who come after them. Furthermore, in times of economic distress or personal hardship for our members, we offer assistance through several methods including low-interest loans, fee waivers, and flexible payment options. We are also proud to partner with several community banks in the region to ensure customers who may not fit the risk profiles of banks can be referred to Afena for their financial needs, which will further decrease unbanked populations in our region.

In addition to the variety of free and low-cost routine banking services we provide, Afena is proud to offer unique lending options that help families maintain their financial stability and improve their quality of life through affordable home improvement loans. Over 70 percent of the loans Afena approves are to families considered to be low- and moderate-income (LMI), with an average credit score of 560-570. Over the last three years, the credit union's loan portfolio achieved double-digit growth.

Born through a collaborative effort with the Community Foundation of Grant County, Afena's Bridge the Gap Loan program is designed as a safe, affordable alternative short term loan program. Through this program, Afena provides small-dollar, low-interest loans with flexible terms specifically for low-income families. These loans are designed to help borrowers build good credit, grow their emergency savings, and improve their financial literacy. Each participant receives free personalized coaching from Afena's certified financial counselors to set them on a path toward financial wellness.

While credit unions nationwide have continued to grow over the past few years, now serving over 140 million consumers, the vast majority are small institutions with limited resources, like Afena. The unique and impactful financial assistance services we provide for our members are under threat with mounting regulatory requirements and expectations from federal regulators. These high levels of regulatory burden are hampering many credit unions from fulfilling their mission of serving LMI Americans. We support tailored and rightsized regulation that accounts for the varying size and complexity of financial institutions, especially community-based, not-for-profit institutions like Afena. Credit unions always put their members first and prudent use of member resources is critical. Diverting those resources toward meeting excessive regulatory requirements has ripple effects, one of the more prominent being a trend toward industry consolidation. This result, ironically, threatens consumer access to credit, disproportionately impacts LMI communities, and strains the entire industry. This unintended consequence of excessive regulatory burden is felt across all small community-based financial institutions, and the people they serve, who are often unable to be banked at other financial institutions.

I look forward to sharing how Afena's unique approach to serving the financial needs of my community may be hindered by recent changes made to the financial services regulatory landscape.

The Credit Union Mission

Credit unions are the original consumer financial protectors because of our not-for-profit, member-owned cooperative structure that aligns the interest of the credit union with its members. Credit unions like mine serve a unique purpose in the financial services marketplace, helping diverse and underserved populations gain access to safe, reliable, and affordable retail banking services. 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.

Credit unions play an essential role in helping individuals, small businesses, and communities prosper by assisting with daily financial management and fostering stronger financial futures. Credit unions continue to offer members affordable interest rates, which keep monthly payments lower. The median interest rate for a 30-year mortgage for near-prime borrowers at a credit union in December 2023 was 9.04 percent.

The median credit union interest rate for a $40,000 auto loan with a 6-year term in December 2023 ranged from 7.33 percent for super prime borrowers to 11.38 percent for deep subprime borrowers. Using recent pricing differences, we found that credit unions save consumers with lower credit scores up to $10,000 over the life of a typical car loan and as much as $73,000 over the life of a typical home loan.[i]

Member-ownership and not-for-profit status results in a wide range of pro-consumer credit union behaviors and substantial pro-social outcomes. Credit union members across the country recognize the real measurable "transformative power" associated with cooperative finance.

"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 hotel and resort fees referenced by others as "junk fees" and, in contrast, are all subject to comprehensive federal or state laws and regulations that include clear and conspicuous consumer disclosures. Sensible payment guardrails are not unfair, deceptive, or abusive, and there are mechanisms in place to ensure consumers are well informed of the costs of these essential financial products.

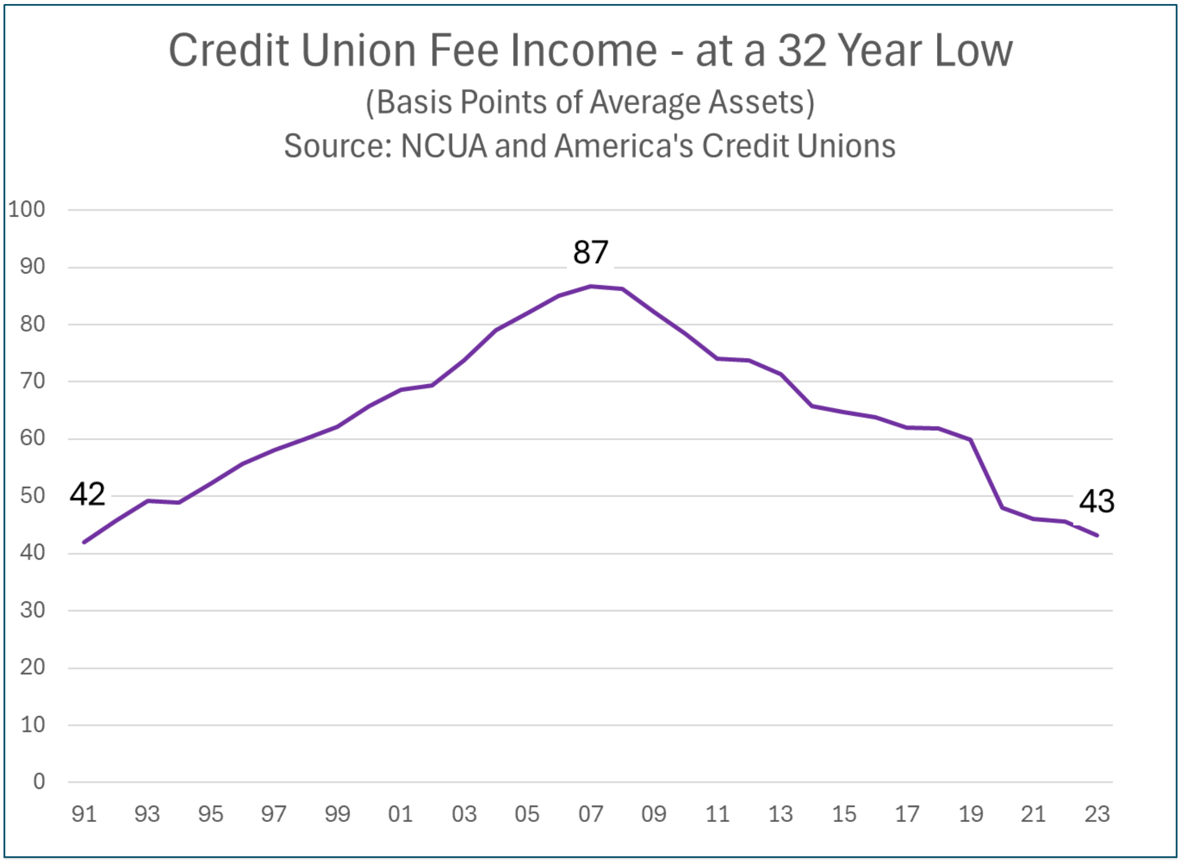
Afena takes financial literacy and counseling seriously and addresses these fee costs head on with our members to ensure they build sustainable and fiscally responsible spending habits. For example, members have opportunities to have multiple overdraft fees waived if they meet with a staff member to get financial counseling.

The CFPB's guidance on these so-called "junk fees" falsely suggests that these fees are for the sole benefit of the financial institution. In practice, these fees are used to help the consumer make responsible financial decisions, cover short-term financial shortcomings, and encourage on-time payments or avoid violating the terms of financial agreements. These fees also enable companies to offset the costs of late payments and their associated risks so that they can continue to offer the financial products that people want and need, particularly to financially vulnerable communities and individuals trying to build credit. These products help many LMI communities and the nearly 26 million Americans who are credit invisible to begin their financial health journeys.

The characterization of these well-disclosed, regulated fees as “junk fees” and the conflation of member-driven financial institutions with financial bad actors has a very real, very harmful impact on the ability of credit unions to serve their members. If credit union members are consistently told by federal regulators, and even the President, that their financial institution is out to get them, it will erode the trust and relationship-focused service that is so crucial to the credit union difference.

Furthermore, the reduction in fee revenue is especially onerous for small credit unions. Although there are often asset-based exemptions for rules, such as the overdraft proposed rule, market pressures create downstream impacts for all financial institutions. Small credit unions will struggle to find non-essential costs to cut in response to decreased revenue when these downward pressures emerge. We have evidence of this from the implementation of Regulation II, where credit unions like mine were exempt from debit interchange caps, but we still saw an over 30 percent decrease in debit interchange revenue since the rule took effect. If burdensome regulation continues to make it more difficult for small financial institutions to operate, we will see fewer banking options, less competition, and higher prices. These results hurt consumers and are the opposite outcome of what the CFPB seeks to achieve.

Service fees for financial products enable credit unions to make financial services overall more affordable and more accessible for Americans, particularly those who are low income. It is important to recognize that fee income at credit unions is at a 32-year low, as evidenced by recent data published by the NCUA and America’s Credit Unions (see figure below). That means basic banking services are more affordable than they have been for a decade. A consumer can join a credit union and open checking and savings accounts, including an ATM card, for free. This is possible in part because of the move towards service fees, such as overdraft or late fees. Credit union members pay for the services they use, such as an overdraft program, which allows the credit union to keep basic services such as checking accounts low cost or free for their members. The cost of eliminating or reducing overdraft based on government mandates instead of market forces is that credit unions like mine will have to raise prices for all members to replace that revenue, making basic banking services less affordable.



Finally, these regulations do not exist in a vacuum. My colleagues within the credit union movement feel as though their revenue on all fronts is being questioned in a manner that fails to recognize the ever-increasing costs of operating a modern, safe, and secure financial institution. As new restrictions on fee income move through the regulatory process there will undoubtedly be a shift in cost-structures that will increase the cost of credit and lower the value proposition that credit unions offer their communities. Credit unions want the Bureau to know that they embody the pro-consumer, relationship banking ethos that the Bureau celebrates, but they feel that the Bureau is not recognizing how difficult the operating environment is becoming.

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. As a credit union with less than $10 billion in assets, we are deeply committed to our mission of promoting financial inclusion and providing affordable, accessible financial services to our members, many of whom are from underserved communities. We are concerned that the proposed rule, as currently drafted, may inadvertently undermine the ability of smaller financial institutions like ours to offer services that are critical to our members' financial well-being.

Like many other credit unions, Afena offers services tailored to assist our members in managing their finances effectively. We provide various options to cover instances where members unintentionally or intentionally overdraft their accounts, including checks, automatic payments, and debit card transactions. To meet the needs of our members, all of Afena's Member Service Representatives are authorized by management to refund up to $100 in overdraft fees upon a member's first request, no questions asked. If a member requests a second refund in a 12-month period, we require them to complete a form and have a counseling session with a Loan Officer or a Member Service Representative. Our team uses their discretion to determine the appropriate amount of fees to refund based on the situation or hardship experienced by the member. Member Service Representatives on our team work diligently to counsel our members to understand the circumstances that led to the overdraft and how to help them prevent habitual use of this service in the future.

We prioritize compliant and user-friendly options for our checking account holders. Additionally, they can opt in to a service where our credit union covers the transaction temporarily, allowing the account to go negative until a deposit is made, albeit with a fee associated. This service, known as Courtesy Pay, is highly valued by our members. If a member's account is overdrawn and the member is not able to bring it current within the 45 days required by regulation, we may offer the member an opportunity to obtain an overdraft payback loan. These loans are generally offered to members whose accounts are overdrawn due to an unexpected life event and have a relatively low interest rate.

Our Courtesy Pay program ensures that members' checks and automatic payments are processed without disruption, preventing them from incurring additional expenses such as returned check fees. We also cover debit card transactions, ensuring that members can access necessities when needed, thus averting potential embarrassments at checkout counters or even critical situations like being unable to purchase groceries due to a shortfall in funds. Contrary to the suggestion that these services exploit consumers, consumers greatly appreciate the option to ensure their transactions are completed. Without overdraft services as a financial lifeline, often bridging the gap between paychecks and covering essential expenses like utilities and groceries, important transactions would be declined. Declining such transactions could spark impacts, like increased fees, disrupted services, and financial insecurity. These potential impacts dwarf the relatively minor cost of an overdraft fee.

To ensure transparency and understanding, we maintain regular communication with members who use the Courtesy Pay service, providing detailed information about limits, fees, and how the service operates. Our members are well-informed and appreciate the clear terms under which overdraft services are offered, including the fees associated with these services. We often receive expressions of gratitude from members who appreciate the assistance these programs offer.

The utilization rate of our Courtesy Pay program stands at approximately 20 percent of our checking accounts monthly, with over 58 percent of account holders having access to all or part of the service as a precautionary measure. We observe a mix of regular and first-time users, and refund about 10 percent of fees, mainly to first-time users, as part of our commitment to supporting them through financial challenges.

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 credit unions like ours 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 us 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 our members.

Moreover, the ability to set and adjust fees enables us to innovate and introduce new services that can help members manage their finances more effectively, such as convenient money management tools or low-cost, short-term credit options that can serve as alternatives to traditional overdraft protection. If the proposed rule drives down the average overdraft fee, these innovations would be at risk.

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. Afena's members have told us that that they do not always trust themselves to pay off credit products and would rather pay a one-time fee like overdraft. 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.

Afena is deeply committed to financial education, offering workshops, online resources, and one-on-one counseling to help our members build budgeting skills, understand credit, and plan for their financial futures, including retirement or their children's education. We believe that expanding these efforts, with support from regulators and policymakers, can have a profound impact on financial inclusion and consumer well-being.

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 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 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 like ours 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.

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.

CFPB Governance Modernization

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 Bureau, a commission would allow multiple perspectives and robust discussion 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 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.[ii] 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 legislative efforts that would improve the Bureau by making this change. sUnfortunately, 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 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 activity 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 or safe and affordable financial products and services.

Principles That Should Guide CFPB Rulemaking

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 members of America's Credit Unions.

- *Use the Bureau's authority in a manner consistent with the original purpose of the CFPB and the spirit of the Dodd–Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act)*

The Bureau should dedicate most of its time and resources to unregulated and under-regulated entities. If the Bureau spent fewer resources on regulating and supervising credit unions and other lenders subject to federal prudential regulation, then it would have more available to focus on unregulated institutions and the businesses actively engaged in objectionable practices that exploit consumers. We believe this balance can be accomplished without sacrificing important consumer protections.

Credit unions remain some of the most regulated entities in the country. 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 in the marketplace, resulting in a higher cost of financial services and reduced access to local community-based providers.

- *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 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 its rules; instead, we ask 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. 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 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 agency 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 prioritizing internal consistency*

Since the passage of the Dodd-Frank Act, there has been 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 matters. 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 compliance resources after final action 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.

Regarding clarity, we oppose the Bureau adopting a "regulation by enforcement" approach to policymaking. We believe if the Bureau wants to make actionable policy, then it should propose 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. 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.

- *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 underlying 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, representative data. 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 of 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 for 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. At Afena, we understand the nuances of how our members use our affordable credit cards and we educate them on the potential fees and costs associated with this service. Over the last several years, we have consistently operated our credit card program near the break-even point or at a net loss to the credit union because we understand the importance of these options for families seeking affordable credit to cover an unintended cost that may arise. For example, we have called for the Bureau's rule governing short-term, small dollar lending to be meaningfully tailored to address predatory lending while not inhibiting credit unions from offering responsible credit products to members in need. It is important that the CFPB strikes an appropriate balance between its consumer protection mission and the availability 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. However, the Bureau should not approach innovation in a manner that places traditional depository institutions at a disadvantage compared to another business model. Ultimately, credit unions must be given equal access to innovation policies and programs.

Conclusion

My lived experiences have underscored the importance of access to quality education and socioeconomic opportunities. They have fueled my commitment to advocating for marginalized communities, addressing systemic inequities, and doing whatever I can to level the playing field. Through mentorship, community outreach, and advocacy efforts, I strive to empower individuals to overcome barriers that prevent them from achieving financial well-being.

Credit unions across the country, including Afena, derive their value in their genuine commitment to serving their communities. Every decision we make is guided by our dedication to our members and the belief that they can achieve a brighter financial future if offered the proper tools, guidance, and most importantly respect. While my career leading financial institutions continues to reach heights beyond my wildest dreams, nothing brings me greater joy than hearing a member of my credit union express gratitude: 'Thank you for empowering me to become a better financial manager. You were there for me when everyone else said no.' While we may not be able to assist everyone, making a positive impact in the lives of those we serve is what truly matters.

It is crucial that stories like mine and the members of Afena are told in the halls of Congress and directly with the regulatory agencies that ensure safety, soundness, and fairness within the diverse financial services ecosystem. Unfortunately, overregulation and attacks on products that provide necessary income to financial institutions, such as mis-characterizing avoidable and clearly disclosed fees as "junk fees, are making it harder for small institutions like mine to survive. It is not one single action that ultimately overburdens small institutions, but rather it is the tidal wave of regulations and restrictions that are ultimately crushing us. Finally, in addition to using your oversight authority to help small institutions, I would also encourage you to act on two small measures pending before the Committee that will help turn the tide and provide relief – S. 2674, the CDFI Fund Transparency Act, which would ensure an annual hearing on CDFI issues for institutions like mine, and S. 610, the Credit Union Board Modernization Act, which would reduce the number of required board meetings for well-run credit unions like mine. Both measures enjoy bipartisan and bicameral support.

Thank you for the opportunity to discuss these issues with the Committee today and I would welcome any questions you may have.

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[i] Equifax Analytic Dataset and America's Credit Unions.
[ii] Seila Law LLC v. Consumer Financial Protection Bureau, 591 U.S. ___ (2020).