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July 14, 2016

The Honorable Jeb Hensarling
Chairman
House Financial Services Committee
United States House of Representatives
Washington, D.C. 20515

Re: NAFCU Comments on the Financial CHOICE Act Discussion Draft

Dear Chairman Hensarling:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association exclusively representing the federal interests of our nation's federally-insured credit unions, I write to share our thoughts on the discussion draft of the *Financial CHOICE Act*. NAFCU thanks you for your attention to the need for regulatory relief and reforms for community financial institutions. We applaud you for your leadership in advancing this debate by releasing a discussion draft of the bill and inviting comments on the draft. We would welcome an opportunity to share our comments formally before the Committee at a hearing on this topic.

Overview

During the consideration of financial reform, NAFCU was concerned about the possibility of over-regulation of good actors, such as credit unions, and this is why NAFCU was the only financial services trade association to oppose the CFPB having authority over credit unions. Unfortunately, many of our concerns about the increased regulatory burdens that credit unions would face under the *Dodd-Frank Act* have proven true. While there are credible arguments to be made for the existence of the CFPB, its primary focus should be on regulating the unregulated bad actors, not adding new regulatory burdens to good actors, like credit unions, that already fall under a prudential regulator. As expected, the breadth and pace of the CFPB's rulemaking is troublesome, and the unprecedented new compliance burden placed on credit unions has been immense.

The impact of this growing compliance burden is evident as the number of credit unions continues to decline. Since the second quarter of 2010, we have lost 1,499 federally-insured credit unions – over 20% of the industry. The overwhelming majority (96%) of these were smaller institutions below \$100 million in assets. While it is true that there has been a historical consolidation trend in the industry, this trend has accelerated since the passage of the *Dodd-Frank Act*. Many smaller institutions simply cannot keep up with the new regulatory tide and have had to merge out of business or be taken over. There is an urgent need for Congress to enact meaningful regulatory relief.

Regulatory burden is the top challenge facing credit unions today. Reducing burdensome and unnecessary regulatory compliance costs is the only way for credit unions to thrive and continue to provide their member-owners with basic financial services and the exemplary service they need and deserve. NAFCU believes that credit unions must have a positive regulatory environment that allows them to succeed. We believe this environment includes:

- The ability to pursue healthy fields of membership that are not limited by outdated laws or regulatory red tape;
- The establishment of capital requirements appropriate to risk, and not a “one size fits all” approach that boxes them in like riskier institutions or establishes regulatory capital regimes that are solutions in search of a problem;
- An independent federal regulator that can address the specific challenges of the industry by tailoring a regulatory regime that recognizes the unique nature of credit unions. This includes exempting credit unions from the rulemaking of the Consumer Financial Protection Bureau (CFPB) and returning that authority to the National Credit Union Administration (NCUA);
- Removing outdated laws and regulations that hinder credit unions’ ability to meet the lending needs of their members, whether natural persons or small businesses;
- Guaranteed access to a healthy secondary mortgage market that recognizes the quality of credit union loans and prices them fairly based on their quality.

We are pleased that the House Financial Services Committee has been a policy partner with NAFCU in addressing many of these issues in this Congress. We look forward to working with the Committee moving forward.

The Financial CHOICE Act

The discussion draft of the *Financial CHOICE Act* is a comprehensive bill that contains a number of NAFCU-supported provisions to provide relief to credit unions. We commend you and your staff for the effort to balance the relief in the bill for all types of financial institutions, including credit unions. We would like to share our thoughts on a number of key sections of the bill.

Title I

As member-owned not-for-profit cooperatives, credit unions are unique players in the financial services community - often less risky than other types of financial institutions. Still, they face many of the same regulatory burdens and capital requirements as riskier institutions. NAFCU has long championed studying what appropriate capital levels for credit unions should look like, including backing the *Credit Union Risk-Based Capital Study Act of 2015* (H.R. 2769). We believe in the importance and uniqueness of credit unions, and that their regulatory regime should reflect that importance by giving them the flexibility they need to best serve their members.

The Dodd-Frank “off-ramp” proposed in Title I of the discussion draft is a novel approach to tackling this issue. NAFCU believes that this proposal deserves careful and thorough examination to ensure the capital requirements in the “off-ramp” can work for various types of institutions, including whether one level fits all types of institutions, if 10% is the proper level for credit unions,

or if it should be lower. We encourage the Committee to thoroughly examine this issue to ensure that financial institutions, such as credit unions, hold the appropriate amount of capital relative to risk and still have access to regulatory relief.

Title III

First and foremost, NAFCU strongly supports the repeal of the failed Durbin Amendment in Section 335 of the discussion draft. We applaud you for your leadership and courage in tackling this important and controversial issue and strongly urge you to fight to maintain this provision throughout the legislative process.

NAFCU also appreciates your efforts to reform the CFPB in this section. As outlined earlier in my letter, we have lost over 20% of credit unions since the creation of the CFPB. We support moving the CFPB to a five-person board structure as proposed. NAFCU has long held the position that, given the broad authority and awesome responsibility vested in the CFPB, a commission structure has distinct consumer benefits over a single director. Regardless of how qualified one person may be, a commission would allow multiple perspectives and robust discussions of consumer protection issues throughout the decision making process. Credit unions and their nearly 104 million members are greatly impacted by the actions of the CFPB and believe the operating structure of the CFPB should be as fair and transparent as possible. Given its broad authority over the entire financial industry, we believe it is important to hold the CFPB subject to greater congressional oversight via the appropriations process.

We support Section 321 to create greater use of advisory boards at the CFPB, including ensuring one for credit unions, along with Section 327, which would bring better oversight to the CFPB consumer complaint database.

While we support Section 328 to raise the CFPB supervision threshold to \$50 billion, we would urge you to go further and remove all credit unions from CFPB supervision and rulemaking, returning the sole authority to NCUA. Such an approach was unanimously supported by Republicans on the House Rules Committee during consideration of the *Dodd-Frank Act*.

We are also generally pleased to see the policy enhancements included in this Title. When it comes to Section 337's removal of "abusive" authority under UDAAP, we would note that irrespective of how UDAAP is addressed statutorily, credit unions need regulatory clarity on this issue. .

Title IV

NAFCU supports the language found in Section 441 to block the Department of Labor's Fiduciary Rule and require a new rulemaking process with the Securities and Exchange Commission.

Title V

NAFCU is pleased to see the bill address the need for better cost-benefit analysis in Subtitle A. One of the biggest contributors to regulatory burden for credit unions is the fact that cost and time burden estimates issued by regulators, such as NCUA and CFPB, are often grossly understated. Unfortunately, there often is no effort to go back and review these estimates for accuracy once a

proposal is final. We believe Congress should require periodic reviews of “actual” regulatory burdens of finalized rules and ensure agencies remove or amend those rules that vastly underestimate the compliance burden. However, a March 2013 survey of NAFCU’s membership found that over 55% of credit unions believe compliance cost estimates from NCUA and CFPB are lower than the actual costs incurred when the credit union has to implement the proposal.

We believe Congress should use their oversight authority to require regulators to provide specific details on how they determined their assumptions in their cost estimates when submitting those estimates to OMB and publishing them in proposed rules. It is important that regulators be held to a standard that recognizes burdens at financial institutions go well beyond additional record keeping.

For example, several of NAFCU’s members have told us that they have had to spend over 1,000 staff hours to train and comply with all of the requirements of the CFPB’s Qualified Mortgage (QM) rules. The CFPB is not the only regulator with inaccurate estimates. NCUA’s 2014 submission to OMB estimates the time to complete the Call Report to be 6.6 hours per reporting cycle. A 2015 NAFCU survey of our members found that many spend between 40 to 80 hours or more to complete a call report. That is a large number of hours of regulatory compliance burden that is not being recognized. That is only one example on one form. More needs to be done to require regulators to justify that the benefits of a proposal outweigh its costs.

NAFCU supports the *Regulations from the Executive in Need of Scrutiny (REINS) Act*, the text of which is found in Subtitle B. While we believe it is important that regulators have the ability and flexibility to regulate their industry and address issues that may arise, we believe major regulations that will have a significant impact deserve additional scrutiny.

NAFCU maintains concerns about the changes to the NCUA found in Subtitles D and E. We believe expanding the NCUA Board to 5 members, as proposed in Section 653, would actually create more bureaucracy and costs for the credit union industry. We believe that a board structure is the proper structure for financial regulators, as this helps ensure diverse views can be heard. Larger boards for regulators that have regulatory authority over multiple industries or large portions of the financial system make sense. However, credit unions are, admittedly, only a small portion of the financial services industry and the NCUA has an established track record of being able to adequately regulate the industry and meet its challenges with a three-member Board. Moving to five members could pose new challenges and create uncertainties. Recent changes by the agency to bring discussion items before the Board at meetings should help foster better communication between the three Board members. Therefore, we do not believe the need exists to expand the NCUA Board to five members, and we would respectfully ask that you remove this provision from the bill when introduced.

We also have concerns about bringing NCUA under the appropriations process as proposed in Section 663. NAFCU and our members have long supported NCUA’s independence. Credit unions are proud to have funded their insurance fund and their regulator and the fact that they have not had to rely on the American taxpayer to govern their industry. Credit unions do not always agree with the regulator and their budget. However, Congress, under your leadership, has helped bring changes and greater transparency to NCUA’s budget process, and the provisions in Title XI of the discussion draft will help continue that.

Title X

NAFCU supports the *SeniorSafe Act of 2016* found in Subtitle R and was pleased to see the House pass this bill by voice vote earlier this month.

As you examine proposals to provide better access to capital, we would urge you to consider adding language to Title X to make it easier for credit unions to provide business loans to their members and modifying the outdated and arbitrary cap on credit union member business lending.

Title XI

NAFCU is pleased to see such a robust section dealing with regulatory relief for main street and community financial institutions. We believe this is one of the most important sections of the bill and would like to offer our thoughts on various measures in this Title.

Subtitle A – NAFCU supports the *Preserving Access to Manufactured Housing Act's* modification of the definitions of a mortgage originator and a high-cost mortgage, which ensure that consumers of small-balanced mortgage loans, including manufactured housing loans, will have access to credit.

Subtitle B – NAFCU supports the *Mortgage Choice Act*, which improves the definition of “points and fees” used to determine if a loan meets the CFPB Qualified Mortgage test by excluding affiliated title charges from the “points and fees” definition and clarifying that escrow charges should be excluded from any calculation of “points and fees.”

Subtitle C – NAFCU supports the *Financial Institution Customer Protection Act* because it would ensure that federal banking regulators are not participating in “Operation Choke Point;” that they do not formally or informally request or order a depository institution to terminate customer or member accounts or restrict or discourage depository institutions from entering into relationships with particular customers or members without a material reason that is not based solely on reputation risk.

Subtitle D – NAFCU supports the *Portfolio Lending and Mortgage Act* because it would treat residential mortgage loans held in portfolio by credit unions as qualified mortgages for the purposes of the CFPB's mortgage lending rules.

Subtitle G – NAFCU supports the *Community Financial Institution Mortgage Relief Act*, which provides a legal safe harbor from escrow requirements for smaller financial institutions, under \$10 billion in assets, that hold loans in portfolio for three years. This would provide much needed relief to many small lenders who stay out of the market due to the cost burden of escrow requirements.

Subtitle H – NAFCU supports the *Financial Institution Examination Fairness and Reform Act* because it would provide credit unions with much-needed clarity and consistency throughout the examination process that is so integral to credit union operations.

Subtitle I – NAFCU supports the *NCUA Budget Transparency Act's* requirement for the NCUA to hold annual open hearings regarding its budget. This would provide much needed transparency and oversight for the regulator. We are pleased that NCUA Chairman Rick Metsger has pledged to return to budget hearings on his own. This provision would help ensure that future chairmen maintain these hearings.

Subtitle J – NAFCU supports the *Taking Account of Institutions with Low Operational Risk (TAILOR) Act*, which would ensure that NCUA, CFPB and other regulators do not use a one-size-fits-all approach to rulemaking. Instead, it would require that rules be tailored to fit the institutions' business models and risk profiles.

Subtitle K – *Federal Savings Association Charter Flexibility*. NAFCU has concerns with this legislation and the potential for it to be a significant increase to the lending ability of thrifts and improve the federal savings association charter. However, we do think it can be balanced with relief and charter improvements for credit unions in a comprehensive package like the *Financial CHOICE Act* and would encourage you to do so if this provision is maintained.

Subtitle L – NAFCU supports the *SAFE Transitional Licensing Act*, which would allow registered originators to move to another state or change jobs from a depository institution to a nonbank lender and continue originating loans for 120 days while getting a new license.

Subtitle O – NAFCU supports the *Homeowner Information Privacy Protection Act's* requirement for the GAO to study whether the additional mortgage data required to be collected and reported under the CFPB's rule unduly exposes consumers to identity theft or the loss of sensitive personal information.

Subtitle P – NAFCU supports the *Home Mortgage Disclosure Adjustment Act's* increase of the thresholds for small depository institutions to be exempt from HMDA reporting requirements. The regulatory relief provided would ease the strain on the operations of small lenders.

Subtitle Q – NAFCU is supportive of the *National Credit Union Administration Advisory Council Act*, which establishes a Credit Union Advisory Council to work with the NCUA Board to determine how federal laws and regulations affect credit unions. We believe any advisory council should have the tools to be effective. NAFCU asks that the Act be expanded to ensure the NCUA Board must respond to Advisory Council concerns before moving forward with new rulemaking. We also would also urge you to consider adding language from H.R. 4950, the *Small Financial Institution Advisory Committees Act*.

Subtitle R – NAFCU supports extended examination cycles of at least 18-months for all well-run credit unions. We support the inclusion of this provision, but would urge you to expand it to clarify that it does not inhibit the existing regulatory authority of NCUA to provide extended exam cycles for all credit unions, not just those under \$1 billion in assets. We appreciate and thank Representative Frank Guinta for his leadership on this provision and for working with NAFCU to bring about this change.

Subtitle S – NAFCU supports greater transparency of the use of funds used by NCUA from the National Credit Union Share Insurance Fund (NCUSIF). This provision requires the NCUA Board

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to provide rationale for any amount the Board proposes to use from the fund and additionally requiring the disclosure of the "overhead transfer rate" with each annual budget. This would create a great sense of transparency and security for the credit unions that fund the NCUSIF.

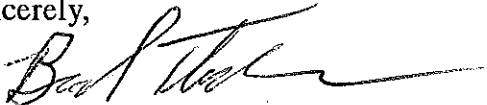
We would also encourage you to consider adding language from H.R. 4038, the *Community Financial Institution Exemption Act* to this Title. This legislation would provide greater exemptions for community financial institutions from CFPB rulemakings. We would urge you to improve upon the language and apply it to all credit unions.

Finally, we would urge inclusion of language from H.R. 5541, the *Financial Services for the Underserved Act*, which would clarify the ability of all credit unions to add underserved areas to their fields of membership.

Conclusion

NAFCU and our members appreciate the opportunity to share our thoughts with you. We thank you for your leadership in proposing such a comprehensive and balanced approach. We realize the discussion draft is just a step in the process to bring about meaningful regulatory relief and reform. We look forward to working with you throughout this process. If you have any questions, or if my colleagues or I can be of assistance in any way, please do not hesitate to contact me or NAFCU's Executive Vice President of Government Affairs and General Counsel, Carrie Hunt, at 703-842-2234 or chunt@nafcu.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Thaler", with a long horizontal flourish extending to the right.

Brad Thaler
Vice President of Legislative Affairs