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National Association of Federally-Insured Credit Unions

B. Dan Berger
President & Chief Executive Officer

March 24, 2021

Mr. Dave Uejio
Acting Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

RE: Larger Participant Authority to Supervise Fintech Companies

Dear Acting Director Uejio:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing to urge the Bureau of Consumer Financial Protection (Bureau or CFPB) to initiate a rulemaking and exercise its supervisory authority over fintech companies that fall within the scope of a “larger participant” in the consumer financial services market. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 124 million consumers with personal and small business financial service products. Although the CFPB may not be a technology expert, it has the tools necessary to provide valuable oversight to players in the markets for consumer financial products and services. The CFPB should use its authority under the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act) to oversee a grossly underregulated industry of fintech companies that offer consumers a wide array of products and services digitally, across state lines, ranging from mortgage servicing to mobile payments and peer-to-peer lending. State-level supervision does not suffice as these fintech companies continue to grow exponentially by offering access to convenient online financial tools. The longer these companies go unchecked, the greater the risk of consumers facing a significant loss or violation of their rights.

The Dodd-Frank Act grants the CFPB the authority to regulate a covered person who “is a larger participant of a market for other consumer financial products or services, as defined by [a] rule” issued in consultation with the Federal Trade Commission.¹ This section of the Dodd-Frank Act also grants the CFPB the authority to supervise larger participants’ compliance with federal consumer financial law through periodic reports and examinations, obtain information about the activities and compliance systems used by larger participants, and detect and assess risks to consumers and to the markets for consumer financial products and services.² Certain fintech companies conduct a substantial volume of transactions involving consumer financial products and services while not being subject to direct supervision by a federal financial regulator.

¹ See 12 U.S.C. 5514(a)(1)(B), (a)(2).

² See 12 U.S.C. 5514(b)(1).

For example, current exclusions in the Bureau’s 2012 larger participants rule for the consumer reporting market may permit non-financial institution data aggregators to avoid classification as a larger participant. While the 2012 rule was intended to afford relief in cases where consumer reporting activities focused on transactional or experiential information, the Bureau’s own advance notice of proposed rulemaking concerning implementation of section 1033 of the Dodd-Frank Act suggests that collection of such information can raise privacy and security concerns. Regardless of how the Bureau proceeds with section 1033, it should fill supervisory gaps that might grant certain financial aggregators preferential treatment if they are not already supervised by a federal banking regulator or state banking authority. At a minimum, the Bureau should reexamine the scope of its larger participants rule for the consumer reporting market if it has already recognized that “data users may compete for customers with the data holders from which they have obtained data” resulting in a dynamic wherein data users may have incentives to be less than forthcoming regarding the use or purposes of particular data collections.³

As noted in the Bureau’s recent Taskforce on Federal Consumer Financial Law Report, non-bank lenders may also be benefiting from regulatory arbitrage resulting from under-regulation.⁴ By 2022, fintech lenders are expected to substantially increase their market share of unsecured personal loans from the already sizeable 49.4 percent of market share in 2019.⁵ Additionally, non-bank mortgage companies originated nearly 60 percent of new mortgages in 2019 and service about half of all mortgage debt.⁶ As a result, the Financial Stability Oversight Council (FSOC) has identified non-bank mortgage companies as a potential emerging threat to the U.S. economy, specifically with respect to the origination and servicing of mortgage loans held by Fannie Mae, Freddie Mac, and Ginnie Mae.⁷ NAFCU has advocated that the Federal Housing Finance Agency (FHFA) establish more stringent capital and liquidity requirements for non-bank mortgage originators and servicers. The CFPB should coordinate with the FHFA as it examines its authority to regulate and supervise non-bank mortgage companies.

NAFCU unquestionably supports additional channels to provide unbanked and underbanked consumers with access to financial products and services, but to protect these consumers, entities offering such products and services should be regulated and routinely examined by a federal agency like the CFPB. Credit unions, as not-for-profit cooperative financial institutions who always put their members first are best suited to address the needs of unbanked and underbanked consumers. Accordingly, NAFCU has consistently advocated for modernization of the *Federal Credit Union Act* to allow all credit unions to add underserved areas to their fields of membership as well as regulatory flexibilities to update field of membership rules to help credit unions adapt to the increasingly digital environment. But credit unions are heavily regulated by both the

³ See Consumer Financial Protection Bureau, Consumer Access to Financial Records, 85 Fed. Reg. 71003, 71006 (Nov. 6, 2020), available at <https://www.federalregister.gov/documents/2020/11/06/2020-23723/consumer-access-to-financial-records>.

⁴ See Taskforce Report, p. 371, fn. 107, available at https://files.consumerfinance.gov/f/documents/cfpb_taskforce-federal-consumer-financial-law_report-volume-1_2021-01.pdf.

⁵ See Taskforce Report, p. 376.

⁶ Financial Stability Oversight Council, 2020 Annual Report, <https://home.treasury.gov/system/files/261/FSOC2020AnnualReport.pdf>.

⁷ Financial Stability Oversight Council, 2019 Annual Report, <https://home.treasury.gov/system/files/261/FSOC2019AnnualReport.pdf>.

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National Credit Union Administration and the CFPB, state regulatory authorities, and other agencies.

Because fintech companies offer such important financial products and services to consumers, they should be operating on a level playing field, subject to the same safety and soundness standards and oversight as depository financial institutions. To date, many fintech companies have been able to limit their exposure to formal supervision by federal financial regulatory agencies, but their presence in the consumer financial markets and the risks posed to the financial system can no longer be ignored. The CFPB should exercise its authority over larger participants in the consumer financial markets, much in the same way it did in the 2012 final rules for larger participants of the markets for consumer reporting and consumer debt collection. Should the Bureau conclude its “larger participant” authority in the Dodd-Frank Act does not authorize it to issue rulemakings and conduct examinations for fintech companies, then NAFCU urges the Bureau to support a legislative amendment to the Dodd-Frank Act to explicitly provide such authority.

Thank you for your consideration and we look forward to working with you to address the risks fintech companies pose to consumers and financial markets. If we can answer any questions or provide you with additional information, please do not hesitate to contact me or Ann Kossachev, NAFCU’s Director of Regulatory Affairs, at 703-842-2212 or akossachev@nafcu.org.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Dan Berger". The signature is stylized with a large initial "B" and a long, sweeping underline.

B. Dan Berger
President and CEO