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B. Dan Berger
President & Chief Executive Officer

National Association of Federally-Insured Credit Unions

January 6, 2017

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: NAFCU's 2017 Top Priorities and Concerns

Dear Director Cordray:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally-insured credit unions, I would like to share with you NAFCU's 2017 regulatory and legislative priorities set by our Board of Directors. These priorities, which touch upon multiple agencies, are created to provide general guidance for NAFCU's advocacy efforts in 2017 and offer additional context for our agency-specific initiatives.

Regarding issues directly related to the Consumer Financial Protection Bureau (CFPB), please note the priorities that address the Bureau's exemption authority under section 1022 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act), and the potential overdraft rulemaking. Additionally, NAFCU anticipates continuing our ongoing advocacy on payday lending, debt collection, and arbitration, among other issues, in 2017.

The coming year promises to be full of opportunities for regulatory and legislative improvements that will advantage this country's 106 million credit union members. NAFCU looks forward to working with the CFPB to leverage these opportunities into real benefits. Should you have any questions, please do not hesitate to contact me, or Carrie Hunt, Executive Vice President of Government Affairs and General Counsel at (703) 842-2234 or chunt@nafcu.org.

Sincerely,

B. Dan Berger

Attachment: NAFCU's Top Legislative and Regulatory Issues of 2017

NAFCU's Top Legislative and Regulatory Issues of 2017

1. **Preserve the Credit Union Tax Exemption** – Republican control of both the House and Senate, along with control of the White House, means that the tax reform debate may get a fresh look from new perspectives. President-elect Trump and Chairmen Brady and Hatch have indicated that tax reform will be a big push in 2017. While no member of Congress has proposed eliminating the credit union tax exemption, it is important to remain vigilant as tax reform is potentially discussed by these new leaders, including potential changes in the Unrelated Business Income Tax (UBIT) law that could impact various credit unions. Preserving the credit union tax exemption is a top legislative issue for NAFCU in 2017.
2. **CFPB's Reform and Exemption Authority** – NAFCU was the only credit union trade association to demand that credit unions be exempt from the Dodd-Frank Act during the debate on financial reform. Unfortunately, our concerns have proved true, as over 20% of the industry has disappeared since the enactment of the Dodd-Frank Act, with regulatory burden being the prime reason. With President-elect Trump and Congressional Republicans planning to bring major changes to Dodd-Frank, NAFCU will bring a full campaign to exempt credit unions from the CFPB in 2017. Short of a full credit union exemption, we will also push for structural changes to the CFPB, such as the Bureau being run by a bipartisan commission as compared to a single director. We also support bringing more accountability to the agency by making it subject to the Congressional appropriations process. Given the recent court ruling in the PHH case that called the current structure into question, we think the time is right to bring reforms to the CFPB.

On the regulatory front, the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act) specifically grants the CFPB with the authority to exempt “any class of covered persons” from any provision or rule. We will seek to build on the support of over 2/3 of Congress that wrote to the CFPB to back these changes in 2016. We will continue to urge the Bureau to use its exemption authority more effectively and will seek greater legislative exemptions and relief for credit unions from burdensome CFPB rules.

3. **Regulatory Relief** - NAFCU constantly monitors regulations and laws to be changed to provide regulatory relief. Both Congress and the agencies have had “regulatory relief” on their agendas, but more needs to be done.

With Republican control of both the House and Senate, the environment remains ripe for action on regulatory relief in the 115th Congress. NAFCU will continue its push for credit union regulatory relief in 2017 by pressing for more Congressional action and for agencies to take action to provide relief where they already have authority to do so.

4. **GSE/Housing Finance Reform** – While the issue did not get much attention in the 114th Congress, a Republican controlled 115th Congress is likely to work with the Trump Administration to seek changes to the GSEs. Housing finance reform and preserving a government guarantee as well as maintaining unfettered access to the secondary market and

ensuring fair pricing for credit unions based on loan quality will remain a top legislative issue for NAFCU for 2017.

On the regulatory front, NAFCU will continue to work to ensure that credit unions' access to the secondary market is not hampered by regulatory actions. The FHFA, under the helm of Director Mel Watt, has been receptive to credit union needs in general, but NAFCU will continue to monitor rulemakings relative to the FHLBs. NAFCU will work with the FHFA to ensure credit unions have the ability to sell their mortgages into the secondary market.

5. **Data/Cyber Security** – Data breaches and lax merchant data protection standards continue to be a concern, and the 114th Congress saw the introduction and committee action on bipartisan legislation in the House, *The Data Security Act of 2015* (H.R. 2205). This bill, which is slated to be introduced in the 115th Congress, and a similar bipartisan Senate bill (S. 961), would create a national standard of protection for retailers. NAFCU has been working with others in the financial services sector to enact reforms that create a safer environment and hold retailers accountable, all while not creating burdensome new requirements on financial services. Some progress has been made in finding a package that multiple industries can support. NAFCU will continue to work with others in the financial sector on this key issue while also seeking to increase credit union awareness of cyber threats.

The National Credit Union Administration (NCUA) has increasingly aimed its supervisory priorities on the evolving risks related to cybersecurity. Among their initiatives, the agency is developing, and intends to roll-out in 2017, a cybersecurity examination procedure largely based on the Federal Financial Institutions Examination Council (FFIEC) Cybersecurity Assessment Tool. NAFCU will continue to engage the agency as it works to develop the tool and ensure that credit unions are not held to overly-burdensome cybersecurity standards.

6. **Field of Membership**- Strengthening the federal charter and pursuing regulatory relief for federal credit unions is at the core of NAFCU's advocacy efforts. NAFCU fundamentally believes the industry's dual chartering system works best when the state and federal charters keep pace with each other. Several states, however, have been much more progressive in modernizing their field of membership (FOM) rules to recognize today's dynamic and ubiquitous marketplace.

On October 27, 2016, NCUA finalized a revised FOM rule and introduced a new FOM proposal. NAFCU will protect NCUA's rule by pushing back against banker attacks. NAFCU also will continue to urge NCUA to provide the industry with more FOM relief, including:

- Eliminating or increasing the core-based statistical area population limits;
- Establishing a formal notification process for credit unions making FOM-related applications; and
- Considering new ways to efficiently authorize mergers.

The banking trade groups have indicated a desire to challenge the legality of the agency's FOM rule. NAFCU will be ready to ensure the FOM rules are implemented swiftly, defend the interests of credit unions, and support the legality of NCUA's FOM rules.

NAFCU will also seek legislative improvements to sections of the Federal Credit Union Act that restrict the ability of credit unions to serve their desired fields of membership, including allowing all credit unions to add underserved areas.

7. **Interchange-** NAFCU will also continue to press the Federal Reserve Board to lessen the negative burden of the Durbin price caps.
8. **Capital/Risk Based Capital Reform** – NAFCU remains concerned with the impact that RBC will have on the credit union industry, included additional regulatory burden and increased costs. NAFCU worked steadfastly to mitigate the impact of a bad rule and, as a result, the final rule recalibrates many risk weights to better align with banks' requirements, removes interest-rate risk from the calculation of the risk-based capital ratio, and extends the implementation date. In 2017, the Trump Administration will appoint new individuals to the NCUA Board and NAFCU will advocate for the new Board to revisit and reconsider the agency's approach to RBC.

To create a true and fair risk-based capital system for credit unions, NAFCU fundamentally believes that legislative reforms are necessary. NAFCU has outlined a legislative solution that will institute fundamental changes to the credit union regulatory capital requirements, including: (1) Directs NCUA to, along with industry representatives, conduct a study on PCA and recommend changes; (2) Modernizes capital standards to allow supplemental capital, and direct the NCUA Board to design a risk-based capital regime for credit unions that takes into account material risks; and, (3) Establishes special capital requirements for newly chartered federal credit unions that recognize the unique nature and challenges of starting a new credit union.

9. **Member Business Lending** – NAFCU has long advocated for member business lending (MBL) reform, both legislatively as well as through NCUA regulatory relief. The NCUA's MBL rule became effective on January 1, 2017 (except personal guarantee requirement, already effective as of May 13, 2016). NAFCU strongly supported the rule as move away from prescriptive regulatory requirements in favor of general principles that will provide credit unions with greater flexibility to better serve their small business members and communities at large. NAFCU will also continue to work with Congress to respond to Banker attacks on the rule and to advance legislation to provide relief from the statutory cap.

On September 7, 2016, the Independent Community Bankers of America (ICBA) filed suit against NCUA in the U.S. District Court for the Eastern District of Virginia on the MBL rule. In their complaint, ICBA alleges that the rule violates the Administrative Procedure Act and "the plain terms of the Federal Credit Union Act...which strictly limits the amount of commercial loans and interests in such loans" that a credit union may hold. NAFCU will continue to vocally support NCUA and the legality of the MBL regulation.

10. Changes to Payments

Future of Payments

NAFCU and its members continue to be engaged in the Federal Reserve Board's evolving payments initiative and Roadmap for the U.S. Payments System. In January 2015, the Federal Reserve announced two task forces to modernize the U.S. Payments systems - the Faster Payments Task Force and the Secure Payments Task Force. NAFCU has been in regular contact with the Fed on this issue and is a member of both of the Federal Reserve's task forces. NAFCU's goal is to ensure that any new payment system can be cost-effective, effective and scalable for credit unions of all sizes.

Regulation D

The restriction on "convenience transfers" under Regulation D presents an ongoing concern for NAFCU and its members. The current law is burdensome, confusing, and prevents depositors from enjoying unfettered access to their funds. Consumers are often unable to understand and remember the arbitrary limits on the number and types of transfers the regulations permit them to make from their savings account. The regulation is outdated and, as a consequence, the transfer restrictions are incoherent. Consumers would benefit from a modification to the regulation that reflects their current needs and the present financial services environment. The anticipated Government Accountability Office (GAO) report on the Regulation D requirement was released on October 17, 2016, and NAFCU will continue to push for reforms in the wake of that report.

Regulation CC

In general, NAFCU believes that the Federal Reserve Board should closely evaluate and modernize the language of Regulation CC in order to bring it in line with the rest of the Board's current regulatory framework and applicable requirements under the Dodd-Frank Act and other legislation. The outdated terminology and requirements still found in Regulation CC are both confusing and misleading for financial institutions and pose serious compliance and safety and soundness concerns.

11. **Patent Reform** – Despite the passage of major patent overhaul legislation in 2011 that provided some relief, patent trolls remain a consistent problem for credit unions. This issue has gotten the attention of Congress and NAFCU will continue to seek relief for credit unions from the attacks of patent trolls.
12. **TCPA Reform** – A recent order by the Federal Communications Commission (FCC) on the *Telephone Consumer Protection Act* (TCPA) hinders the ability of credit unions to contact their members on important issues. NAFCU will continue our efforts to get the FCC to reconsider or reform their order, and to get Congress to modernize the TCPA. In addition, the Trump Administration will likely make changes to the composition of the Commission and NAFCU will advocate for the FCC to revisit and reconsider the Commission's approach to the TCPA.

13. **Military Lending Act Clarity** – The Department of Defense (Defense Department) amended its regulation implementing the *Military Lending Act* (MLA). The Act was created enhance protections for members of the armed services and their dependents in consumer credit transactions and establish a Military Annual Percentage Rate (MAPR) cap of 36 percent. Among the many changes made by the final rule is an expanded definition of “consumer credit,” which now covers a broader range of closed-end and open-end credit products.

The rule had a compliance deadline of October 3, 2016, with credit card accounts exempted until October 3, 2017. NAFCU will continue to urge the Defense Department to release additional MLA compliance guidance, clarify and amend the text of the MLA final rule, and push back the credit card compliance deadline by an additional year.

14. **Overdraft Programs** – For the past few years, the CFPB has consistently listed overdraft on its rulemaking agenda. However, the Dodd-Frank Act requires the CFPB to convene a Small Business Review Panel to solicit input from small entities before introducing any formal proposed rule. The CFPB has indicated to NAFCU that it plans to issue an overdraft Outline of Proposals under Consideration sometime in early-2017.

NAFCU will continue to be in close contact with the CFPB on this issue to ensure that credit union interests are represented both on the Small Business Review Panel and in any rulemaking of overdraft programs.

15. **Flood Insurance Reauthorization** – The *Biggert-Waters Flood Insurance Reform Act of 2012* reauthorized the National Flood Insurance Program (NFIP) through Sept. 30, 2017. Congress will work on reauthorizing the NFIP in 2017 and NAFCU will continue our efforts to ensure that the program doesn’t lapse and that changes do not have a negative impact on credit unions.

16. **Regulation of FinTech** – The growth of online marketplace lenders underline the need for Congress and regulators to modernize existing laws and regulations on traditional financial institutions to facilitate greater access to credit (including in areas such as E-SIGN). Financial regulators must require online marketplace lenders to meet basic consumer protections such as the *Truth in Lending Act*, Banking Secrecy Act (BSA)/Anti-Money Laundering (AML) requirements, underwriting standards for loans, applicable state usury laws, and others. NAFCU will continue to advocate for a level playing field.

17. **CECL Implementation** – In June 2016, the Financial Accounting Standards Board (FASB) issued its long-expected final “current expected credit loss” (CECL) accounting standard update (ASU). The final ASU included a number of changes that NAFCU advocated for, such as measures to make the standard scalable and an extended implementation period for credit unions. NAFCU will work with NCUA to ensure credit unions receive clear accounting guidance and minimize burden during NCUA’s examination process.