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National Association of Federally-Insured Credit Unions

January 9, 2018

The Honorable Mick Mulvaney
Acting Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

RE: Tenets and Priorities of our Nation's Credit Unions

Dear Acting Director Mulvaney:

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 the top tenets and priorities of our nation's credit unions. Member-owned not-for-profit credit unions provide over 110 million Americans with personal and small business financial service products as the economy continues to recover from the financial crisis. Each year, the NAFCU Board, made up of credit union CEOs from across the nation, identifies the top issues in the upcoming year that impact credit unions.

In addition to these general priorities, which touch upon both legislative and regulatory concerns, the second part of this letter discusses priorities that specifically concern the Consumer Financial Protection Bureau (CFPB). We hope that you will work with us to address these top legislative issues for credit unions.

- 1. NAFCU supports a regulatory environment that allows credit unions to grow.** NAFCU believes that there must be a regulatory environment that neither stifles innovation nor discourages credit unions from providing consumers and small businesses with access to credit. This includes protecting the current tax status of credit unions. It also includes the ability of credit unions to establish healthy fields of membership that are not limited by outdated laws or regulatory red tape. Credit unions need modernized capital standards that reflect the realities of the 21st century financial marketplace. Additionally, there must be a housing finance system that works for credit unions.

Action items under this priority include, but are not limited to:

Preserving the Credit Union Tax Exemption – NAFCU thanks Congress and the Administration for preserving the credit union tax exemption in the recently passed tax reform legislation.

GSE/Housing Finance Reform – Both the House Financial Services Committee and the Senate Banking Committee have housing finance reform on their agenda. Even though no clear

proposal has yet emerged, 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.

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 Federal Housing Finance Agency (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 Federal Home Loan Banks (FHLBs). NAFCU will work with the FHFA to ensure credit unions have the ability to sell their mortgages into the secondary market.

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 the regulatory front, NAFCU will continue to urge the National Credit Union Administration (NCUA) to provide the industry with more FOM relief, including: 1) eliminating or increasing the core-based statistical area population limits; 2) establishing a formal notification process for credit unions making FOM-related applications; and 3) considering new ways to efficiently address 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 believes that there must be 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.

Capital/Risk Based Capital Reform – NAFCU remains concerned with the impact the Risk-Based Capital (RBC) rulemaking will have on the credit union industry, including regulatory burden and increased costs. NAFCU will continue to advocate for NCUA to revisit and reconsider the agency's approach to RBC or for Congress to step in and stop the rule from becoming effective on January 1, 2019. NAFCU will also continue to advocate for access to supplemental capital for all credit unions.

- 2. NAFCU supports appropriate, tailored regulation for credit unions and relief from growing regulatory burdens.** Credit unions are swamped by an ever-increasing regulatory burden from the CFPB and other regulatory entities, often on rules that are targeting bad actors and not community institutions. NAFCU supports cost-benefit analysis in regulation, and wants to ensure that we have an effective regulatory environment where positive regulations may be easily implemented and negative ones may be quickly eliminated. NAFCU also believes that enforcement orders from regulators should not take the place of

regulation or agency guidance to provide clear rules of the road. This includes seeking regulatory relief and reform that allows credit unions to better serve their members.

Action items under this priority include, but are not limited to:

Regulatory Relief – Both the House Financial Services Committee and the Senate Banking Committee continue to work on the issue of regulatory relief. NAFCU will continue its push for credit union regulatory relief in 2018 by pressing for more Congressional action and for agencies to take action to provide relief where they already have authority to do so.

Member Business Lending – NAFCU has long advocated for member business lending (MBL) reform, both legislatively as well as through NCUA regulatory relief. NAFCU will also continue to work with Congress and the NCUA to provide relief from the statutory cap.

CFPB Exemption Authority – 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.

Unfair, Deceptive, or Abusive Acts and Practices (UDAAP) – Since the enactment of the Dodd-Frank Act, NAFCU has worked to seek clear, transparent guidance from the Bureau on its expectations for credit unions under the law. NAFCU believes that a UDAAP rulemaking and/or guidance — articulating clear supervisory expectations — is necessary to ensure credit unions have the information they need to ensure their operations are safe, sound, and reflective of the spirit and letter of the laws governing them.

3. NAFCU supports a fair playing field. NAFCU believes that credit unions should have as many opportunities as banks and non-regulated entities to provide provident credit to our nations' consumers. NAFCU wants to ensure that all similarly situated depositories follow the same rules of the road and unregulated entities, such as predatory payday lenders, do not escape oversight. We also believe that there should be a federal regulatory structure for non-bank financial services market players that do not have a prudential regulator, including emerging Fintech companies. Additionally, retailers and others who handle personal financial information should be held responsible for protecting that information, and should pay their share for costs associated with data breaches and using the payments system.

Action items under this priority include, but are not limited to:

Interchange - NAFCU will continue to push to repeal the failed Durbin amendment and fight against any efforts to expand interchange price caps to credit cards. NAFCU will also continue to press the Federal Reserve Board to lessen the negative burden of the Durbin price caps.

Data/Cyber Security –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. NAFCU will also continue to help credit unions deal with the aftermath of the Equifax breach, including support of seeking efforts to better protect data held by credit bureaus. 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.

As you are aware, NCUA has increasingly aimed its supervisory priorities on the evolving risks related to cybersecurity. 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.

Regulation of FinTech Companies – 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.

4. NAFCU supports government transparency and accountability. NAFCU believes regulators need to be transparent in their actions, with the opportunity for public input, and should respect possible different viewpoints. We believe a bipartisan commission structure is the best form of regulatory governance for independent agencies, and all stakeholders should be able to have input into the regulatory process.

Action items under this priority include, but are not limited to:

CFPB Reform– 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. NAFCU will continue to support 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.

Refunds of Stabilization Assessment Monies – NAFCU continues to question the propriety of the NCUA Board's decision to raise the normal operating level (NOL) of the National Credit Union Share Insurance Fund (NCUSIF) to 1.39 percent. While we believe the 2018 rebate proposed by NCUA is a good first step, NAFCU will continue to urge the agency to focus on ways to provide additional refunds to credit unions and return the NOL to its customary level of 1.30 percent as soon as possible. Returning additional funds to credit unions will allow credit unions to put those dollars to work helping members.

5. NAFCU supports a strong, independent NCUA as the primary regulator for credit unions. NAFCU believes that the NCUA is best situated with the knowledge and expertise

to regulate credit unions due to their unique nature. The current structure of the NCUA, including a 3-person board, has a track record of success. NCUA should be the sole regulator for credit unions and work with other regulators on joint rulemaking when appropriate. Congress should make sure that the NCUA has the tools and powers that it needs to effectively regulate the industry.

Actions items under this priority include, but are not limited to:

CFPB Reform – As mentioned above, 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. We will continue to advocate for credit unions to be outside of the CFPB's authority.

Chairman McWatters wrote to the CFPB twice in 2017 requesting that the Bureau exempt federally insured credit unions (FICUs) with assets over \$10 billion from the examination and enforcement provisions of section 1025 of the Dodd-Frank Act. As the prudential regulator of FICUs, the NCUA possesses and is able to bring to bear a broader arsenal of enforcement tools than is available to the CFPB when dealing with problem credit unions. Under the proposed exemption, all FICUs would continue to be subject to consumer financial protection laws and applicable CFPB regulations. NAFCU believes this request has merit and should be examined further.

NCUA Structure – NAFCU will continue to oppose any efforts to bring the agency under congressional appropriations and/or expand the NCUA Board to five members.

CFPB-Specific Priorities

In addition to the priorities discussed above, NAFCU urges the CFPB to consider and address the following recommendations:

Review of All Regulations – As a starting point, NAFCU believes that the Bureau should use the publication of its strategic plan as an opportunity to review all its regulations. To assist in this effort, NAFCU recommends that the Bureau establish a regulatory reform Task Force and adopt a regulatory reform agenda, pursuant to President Trump's Executive Order 13777, "Enforcing the Regulatory Reform Agenda." NAFCU asks the Bureau to evaluate all its existing regulations to identify which should be repealed, replaced, or modified.

Increased Use of Exemption Authority – Since the enactment of the Dodd-Frank Act, over 1,500 federally-insured credit unions have been forced to close their doors or merge with other credit unions. That amount represents over 20 percent of the industry, and this rate of loss has only increased since the creation of the CFPB. A large majority of those credit unions that have closed or merged were small in asset size, and as such, could not afford to comply with all the rules promulgated by the CFPB. Therefore, it is incumbent upon the CFPB to provide some degree of regulatory relief for small entities that cannot afford to comply with complex rules, and would otherwise be forced to stop offering services to members.

Although the Bureau already provides for some exemptions based on an entity's asset size, such as the Qualified Mortgage rule, NAFCU strongly believes that the Bureau can do more, such as increase the exemption threshold, or consider exemptions based on an institution's characteristics and activities. For example, on October 26, 2017, the Office of Financial Research (OFR), led by a Director that was appointed during the previous administration, published a report that supports NAFCU's long-held stance that size does not equal risk. The report, "Size Alone is Not Sufficient to Identify Systemically Important Banks," found that the asset size of an institution is insufficient to determine riskiness. Rather, the report asserts that a multi-factor test that examines the nature and activities of the institution is a better indicator of risk.

Although NAFCU appreciates that the CFPB's various asset threshold requirements are intended to provide regulatory relief, the Bureau should not hinge its determinations on the asset size of the credit union. As the Bureau considers the reform measures recommended in this letter, NAFCU respectfully asks the CFPB to more closely consider criteria by which a credit union should achieve relief, rather than prohibit relief merely due to asset size.

Qualified Mortgages – Many of NAFCU's members have decided to extend only mortgages that meet the definition of safe harbor "qualified mortgage" as they are concerned that they will not be able to sell non-qualified mortgages and are worried about the legal and regulatory risks associated with extending non-qualified mortgages. Due to the hesitance of lenders to extend non-qualified mortgages, NAFCU is concerned that many otherwise qualified borrowers will not be able to obtain mortgages.

NAFCU believes the definition of qualified mortgage must be revised in a number of ways to reduce the enormous negative impact the rule undoubtedly has on credit unions and their members, in particular the debt-to-income (DTI) threshold (43% of the total loan) and the inclusion of affiliate fees in the calculation of points and fees.

Consumer Complaint Database – The CFPB continues to encourage consumers to utilize its public Consumer Complaint Database to disclose consumer complaints and narratives that the CFPB receives on most financial products, such as credit cards, mortgages, bank accounts and services, private student loans, other consumer loans, credit reporting, money transfers and debt collection.

NAFCU believes that the CFPB's Consumer Complaint Database presents a very specific reputational risk concern for financial institutions. These complaints follow a pattern of unverified information that is given credibility by the mere fact that the CFPB is posting it on their website. There is no mechanism to ensure the complaints are fully vetted. Credit unions have unique relationships with their members and NAFCU supports resolution and investigation of valid and verified member complaints by the credit unions, but the reputation risk brought on by unverified complaints is significant and not easily mitigated.

Home Mortgage Disclosure Act Requirements – The CFPB finalized amendments to Regulation C in October 2015 that made several substantive changes to the reporting requirements under the Home Mortgage Disclosure Act (HMDA). The final rule, among other things, expanded the data financial institutions are required to collect and report under Regulation C. Some of the

expanded data collection and reporting is driven by Dodd-Frank, which amended HMDA to require collection of certain new data points. However, the CFPB also appears to have taken this opportunity to collect significantly more data than Dodd-Frank expressly requires. In addition to expanded data collection, the final rule changed the scope of Regulation C's coverage to include most closed-end loans, open-end lines of credit and reverse mortgages secured by dwellings. Under this expansion, reporting is required on all HELOCs.


NAFCU believes that the Bureau should limit the changes to the HMDA dataset to those mandated by Dodd-Frank. Although credit unions support HMDA requirements that further the goal of ensuring fair lending and anti-discriminatory practices, NAFCU is concerned that some of the additional reporting requirements do not achieve these goals and only serve to impose significant additional compliance and reporting burdens.

Additionally, NAFCU urges an exemption from HMDA reporting for all home equity lines of credit or, in the alternative, higher reporting thresholds for close-end and open-end loans. Recently, the Bureau proposed amendments to Regulation C that would increase the threshold for collecting and reporting data with respect to open-end lines of credit so that financial institutions originating fewer than 500 open-end lines of credit in either of the preceding two years would not be required to collect such data. However, this exemption is only in effect for a period of two years, until January 1, 2020. NAFCU strongly urges the Bureau to make this exemption permanent so that credit unions have long-term certainty.

Overdraft – NAFCU believes the CFPB's continued pursuit of data on overdraft programs constitutes extraordinary regulatory overreach. Credit unions are focused on providing value to their members by offering responsible overdraft protection. In fact, NAFCU's June 2015 *Economic & CU Monitor* survey found that every respondent offered an alternative to overdraft or courtesy pay programs, with overdraft lines of credit and linked savings or money market accounts being the most popular (84.4% each). Instead, NAFCU asks that the Bureau's reform agenda indicate its intentions to not promulgate overdraft regulations.

Thank you for your consideration and attention to these important matters. We look forward to working with you to address these priorities. If we can answer any questions or provide you with additional information on any of these issues, please do not hesitate to contact myself or NAFCU's Director of Regulatory Affairs, Alexander Monterrubio, at 703-842-2244, or amonterrubio@nafcu.org.

Sincerely,


B. Dan Berger
President and CEO

Thanks for your continued support!