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National Association of Federally-Insured Credit Unions

December 12, 2022

The Honorable Charles E. Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Re: Credit Union Priorities in Any End-of-Year Legislative Package

Dear Leader Schumer, Speaker Pelosi, Leader McConnell, and Leader McCarthy:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) to ask for your support for our nation's credit unions as you complete your legislative work for the 117th Congress and consider an end-of-year government funding package. As you are aware, NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 134 million consumers with personal and small business financial services products. We urge Congress to work to avoid any government shutdown and to consider these credit union concerns as you craft any year-end package:

NAFCU Opposes Efforts to Expand NCUA Vendor Authority

NAFCU strongly opposes any effort (such as S. 4698, the Improving Cybersecurity of Credit Unions Act, and H.R. 7022, the Strengthening Cybersecurity for the Financial Sector Act of 2022) that would expand NCUA examination authority over credit union third-party vendors. NAFCU and our member credit unions believe that cybersecurity, including the security of vendors that credit unions do business with, is an important issue. However, we are opposed to granting additional authority to the NCUA to examine third parties at this time. NAFCU believes in a strong NCUA, but we also believe that the NCUA should stay focused on where its expertise lies—regulating credit unions. Credit unions fund the NCUA budget. Implementing such new authority for the NCUA would require significant expenditures by the agency. The history of the NCUA's budget growth has shown that these costs would ultimately be borne by credit unions and their members.

There are other tools already in place for the NCUA to get access to information about vendors. We believe the agency's time and resources are better focused on reducing regulatory burden by coordinating efforts among the financial regulators. The NCUA sits on the Federal Financial Institutions Examination Council (FFIEC) with the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Federal Reserve. The FFIEC was created to coordinate

examination findings and approach in the name of consistency and to avoid duplication. This means that as a member of the FFIEC, the NCUA should be able to request the results of an examination of a core processor from the other regulators and not have to send another exam team from the NCUA into that processor's business and duplicate an examination. This would seem to be an unnecessary burden on these small businesses. Additionally, if the NCUA did its own examination, the likelihood of finding anything the other regulators did not would be close to nil.

Instead of granting the NCUA vendor examination authority, Congress should encourage the agency to use the FFIEC and gain access to the information on exam findings on companies that have already been examined by other regulators. If that option is not available for the NCUA due to the decisions of the other FFIEC regulators, Congress should consider compelling the other regulators to share the information with the NCUA. This would seem to be a much more preferable route than raising costs on credit unions and their 134 million members for the creation of a duplicative NCUA program. Supervisory reports for core providers will likely have significant cross-applicability; according to the NCUA, approximately five core processor vendors control approximately 85 percent of credit union data.¹ Use of existing reports for other technology service providers would also address the NCUA's concerns without creating additional costs to credit unions or increasing regulatory burdens on credit unions and small businesses. As such, we urge Congress to oppose granting the NCUA this new authority.

NAFCU Opposes Efforts to Expand Interchange Price Caps

NAFCU strongly opposes the Credit Card Competition Act of 2022 (CCCA), H.R. 8874 and S. 4674, legislation that would harm community financial institutions, including credit unions, by extending debit interchange routing requirements to also cover credit cards. This change would function as a backdoor price control on credit card transactions and would affect financial institutions of all sizes, regardless of the proposed exemption, and could greatly increase fraud costs as merchants select cheaper but less secure networks to process transactions. As experience with Section 1075 of the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010, commonly referred to as the Durbin Amendment, has shown, government intervention in the interchange market affects all market participants, even including smaller institutions below what is meant to be an exemption threshold. Those smaller institutions have seen a precipitous erosion of their per-transaction debit interchange revenue as a result of the Durbin Amendment and taking similar steps on credit card interchange would put them at risk.

While the intent of the Durbin Amendment was to prevent card issuers and networks from unfairly charging merchants higher rates and thus passing higher costs along to consumers, the evidence overwhelmingly suggests that it has not helped everyday Americans. According to Federal Reserve data, this amendment has taken away \$6-8 billion per year from the revenue that banks and credit unions use to serve their customers and members. The erosion of interchange fees is particularly hard on credit unions, which are statutorily limited in what products they may offer and investments they can make. While a bank may be able to turn to capital markets or choose other investments, credit unions have

¹ NCUA OIG, Audit of the NCUA's Examination and Oversight Authority Over Credit Union Service Organizations at 3.

very few options to replace this lost income. As not-for-profits, this ultimately hurts what they can do for their members. There is no evidence that merchants have passed along their savings to consumers in the form of price cuts, and the regulatory burden and loss of revenue for banks and credit unions has led to industry consolidation and the difficult choice to charge for services that were once free, such as checking accounts.

Credit unions are committed to serving their members and, as such, must be able to make a reasonable return on payment card programs in order to continue to provide important consumer financial services. NAFCU urges both the House and Senate to reject this legislation.

NAFCU Supports Passage of the Bipartisan SAFE Banking Act

The vast majority of states have authorized varying degrees of marijuana use, ranging from limited medical use to decriminalization and recreational use at the state level. NAFCU has heard from a number of our member credit unions in these states that they are being approached by their members, or potential members, that have a small business in or are serving the legal cannabis industry in their state and are seeking banking services. As the cultivation, sale, distribution, and possession of marijuana remains illegal at the federal level under Schedule I of the Controlled Substances Act, the majority of credit unions remain hesitant to provide financial services to these members and their small businesses in light of significant regulatory challenges that compound the uncertainty of providing financial services to state-authorized marijuana-related businesses (MRBs). While the SAFE Banking Act, H.R. 1996 and S. 910, does not address every issue on this front, it seeks to provide a safe harbor for financial institutions that wish to serve such businesses and would be an important step towards improving clarity and addressing what is often perceived as misalignment between federal and state laws.

NAFCU does not have, and is not taking, a position on the broader question of the legalization or decriminalization of marijuana to any degree at the federal or state level. However, we do support Congress taking the steps found in the SAFE Banking Act to provide greater clarity and legal certainty at the federal level for credit unions that choose to provide financial services to state-authorized MRBs and ancillary businesses that may serve those businesses in states where such activity is legal. This issue has been unresolved for too long, and the time to act is now.

NAFCU Supports Improvements to the Central Liquidity Facility (CLF)

The CLF is an important liquidity tool for credit unions, and NAFCU believes strong liquidity is vital to ensuring loans to struggling families and small businesses continue to flow within the credit union system. NAFCU supports legislation, such as H.R. 3958, the Central Liquidity Facility Enhancement Act, and S. 5183, that would make improvements to the CLF. On November 29, 2021, all three members of the NCUA Board joined together in a bipartisan letter to urge Congress to support enhancements to the CLF, and the NCUA Board continues to call for legislation on this matter. These enhancements provide the NCUA with a vital tool to ensure the credit union system has access to a critical contingent liquidity source as it responds to economic disruptions. Enacting these changes would provide regulatory

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certainty for federally-insured credit unions and grant the NCUA additional flexibility to safely manage access to emergency liquidity.

NAFCU Urges the Senate to Act on the Bipartisan Credit Union Board Modernization Act

NAFCU strongly supports the Credit Union Board Modernization Act, H.R. 6889 and S. 4325, which would reduce the outdated requirement that credit union boards of directors hold monthly meetings to instead require no fewer than six meetings per year. The new standard would only apply to credit unions in strong financial condition, protecting the safety and soundness of the financial system, and would allow those credit unions to devote more resources toward serving their members. Modern technology allows credit unions to stay in touch with their board members in the intervals between board meetings, and many states have already adopted this change for state-chartered credit unions. This legislation passed the House in September 2022, and we urge the Senate to take it up before the end of the year.

NAFCU Supports Greater Transparency from the CDFI Fund

NAFCU has heard from many credit unions, both current members and those seeking certification, about problems with the Community Development Financial Institutions (CDFI) Fund. Credit unions have lost CDFI certification without warning or a cure period to rectify issues, applications for CDFI certification have faced significant delays, and the CDFI Fund has not engaged in clear communication about changes to certification criteria. CDFIs provide vital support to underserved communities, and we encourage Congress to examine these issues and press the CDFI Fund to address these concerns and work more closely with functional regulators, including the NCUA, to reduce burdens on CDFI-certified institutions.

We thank you for the opportunity to share our thoughts and look forward to continuing to work with you this Congress on important credit union issues. Should you have any questions or require any additional information, please contact me or Lewis Plush, NAFCU's Senior Associate Director of Legislative Affairs, at lplush@nafcu.org.

Sincerely,



Brad Thaler
Vice President of Legislative Affairs

cc: Members of the United States Senate
Members of the United States House of Representatives