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National Association of Federally-Insured Credit Unions

May 12, 2023

Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: Greenhouse Gas Reduction Fund – Clarification of Credit Union Eligibility Under Proposed Implementation Framework

Dear Administrator Regan:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU) and the nation's credit unions, I urge the Environmental Protection Agency (EPA) to offer clarity to credit unions, including Community Development Financial Institution (CDFI) credit unions, regarding their ability to participate in grant opportunities under the Greenhouse Gas Reduction (GHGR) Fund before issuing the Notice of Funding Opportunity (NOFO). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 135 million consumers with personal and small business financial services products. CDFIs and credit unions already serve low-income and disadvantaged communities across the country, are subject to numerous regulatory requirements and robust supervision, work to offer green loan options to support energy efficiency, and are eager to help their members reduce their carbon footprints.

NAFCU has supported a multi-recipient model that prioritizes community-based lenders like credit unions to swiftly carry out the intent of the GHGR Fund[1] and appreciates the EPA's recognition that credit unions play an important role in their communities and in the execution of the GHGR Fund. However, the EPA must confirm the threshold eligibility requirements in its new proposed implementation framework to confirm that credit unions and CDFIs can receive funding as sub-awardees under the Investment Fund or through financial assistance in the form of loan guarantees that flow through an eligible recipient such as a nonprofit credit union lending intermediary. The EPA should further confirm its authority to award grants to credit union lending intermediaries and that those intermediaries can deploy GHGR Fund monies through platforms managed by a credit union service organization (CUSO).

[1] NAFCU Letter to EPA, Request for Information – Greenhouse Gas Reduction Fund (Docket ID No. EPA-HQ-OA-2022-0859) (Dec. 5, 2022), https://www.nafcu.org/system/files/files/12.5.2022%20Letter%20to%20EPA%20re%20Greenhouse%20Gas%20Reduction%20Fund%20RFI.pdf.

The Inflation Reduction Act of 2022 added new Section 134 to the Clean Air Act (CAA) to establish the GHGR Fund grant program to offer competitive funding to support zero-emission technologies and funds for financial and technical assistance for projects that reduce or avoid greenhouse gas emissions and other forms of air pollution, especially for projects in low-income and disadvantaged communities.[2] The EPA has broad authority to determine the types of non-profit entities that meet the requirements of "eligible recipient" in Section 134(c)(1) and the indirect recipients that may receive funding under Section 134(b)(2).

Credit unions are not-for-profit organizations and low-income-focused lenders that clearly fall within the scope of entities contemplated as indirect recipients in Section 134(b)(2). The CAA permits credit unions to provide financial assistance to their members through qualified clean energy projects through funding received as "indirect recipients" from a national nonprofit lending entity. The CAA also authorizes credit unions to organize and implement independent nonprofit organizations to serve as "direct recipients" of grants from the GHGR Fund to achieve the goals of the Fund in a cost-effective and efficient manner that maximizes leverage capital and best serves low-income and disadvantaged communities.

Although credit unions and other depository institutions cannot receive funding as direct recipients, nothing in the CAA precludes an eligible recipient that is a special-purpose nonprofit organization that derives some or all of its charitable funding from credit unions, CDFIs, and/or other ineligible recipients. In fact, the statute grants the EPA broad authority to make grants to a variety of lending intermediaries, including those organized by credit unions and CDFIs, so long as they meet the eligibility criteria under CAA Section 134. Lending intermediaries established by credit unions and CDFIs can easily be structured to meet these eligibility criteria. The deployment of GHGR Fund monies can then be achieved through platforms managed by CUSOs to make loans rapidly for a substantial number of consumers in low-income and disadvantaged communities.

An important nuance in Section 134(c)(1)(B) related to the definition of eligible recipient is that only deposits "from repayments and other revenue received from financial assistance provided using grant funds" under the GHGR Fund are permitted. A credit union lending intermediary could easily be designed to satisfy this limitation by neither taking deposits nor receiving revenues other than those repayments or revenues received from the low-interest loans or other financial assistance provided directly to qualified projects or indirectly through funding and technical assistance provided to its partner credit unions and CDFIs. However, because of how the law uses the term deposits, which includes repayments of financial assistance, any financial institution which has a history of providing financial assistance (such as an existing green bank), may need to create new financial intermediaries to serve as eligible recipients that meet these criteria. The EPA should clarify this statutory requirement for prospective applicants.

Credit unions have the potential to play a unique and critical role in achieving the goals of the GHGR Fund. Credit unions' vast experience as community-based, cooperative lenders will lead to

[2] Pub. L. No. 117-169, § 60103, 136 Stat. 1818, 2065-67 (2022).

a diverse set of recipients that will ensure the long-term success of the GHGR Fund. Excluding credit unions from eligibility to receive grant funding from the Investment Fund will severely limit the scope and inclusivity of the GHGR Fund, disproportionately impacting the exact communities that Congress specifically intended to reach with this program—low-income and disadvantaged communities. Other potential recipients may not have the specialized knowledge and competency to create a foothold in the communities that credit unions and CDFI credit unions are already serving. NAFCU has previously described in further detail the benefits of incorporating credit unions into the GHGR Fund process in its December 5, 2022 letter and January 10, 2023 letter.[3]

NAFCU's members are concerned that the proposed implementation framework does not accurately describe potential structures for credit unions to participate in the Investment Fund. NAFCU requests the EPA explicitly detail the following structure options for credit unions: (1) permitting credit unions to participate as sub-awardees, under the EPA's Subaward Policy; or (2) defining "financial assistance" in the statute as "financial products" to include loan guarantees—in other words, eligible recipients, including nonprofit lending intermediaries established by credit unions, can receive loan guarantees as financial assistance to allow credit unions and CDFIs to offer loans to their members with lower interest rates to assist with the deployment of qualified clean energy projects. Should the EPA determine that the latter option is the most appropriate interpretation for the implementation of the Investment Fund, then credit unions and CDFIs would not need to have the option to participate as sub-awardees under the EPA's Subaward Policy.

Additionally, NAFCU prompts the EPA to confirm the permissibility of establishing an administrative lending platform to assist in the processing and servicing of loans offered by credit unions and CDFIs to their members to support qualified clean energy projects. Lending intermediaries should be permitted to establish such administrative platforms through a CUSO, which can be a wholly owned, for-profit entity, to assist the lending intermediary in meeting its objective of offering credit unions, as indirect recipients of GHGR Fund monies, to make low-interest loans and offer other financial assistance to their communities for the qualified clean energy projects. The EPA should further clarify a lending intermediary's options for engaging a CUSO to perform these administrative functions, either as a subrecipient or as a third-party contractor that undergoes a competitive procurement process according to federal regulations.

Thank you for your prompt attention to resolving this threshold eligibility issue and other concerns from NAFCU's member credit unions. We look forward to working with you to help credit unions access GHGR Fund monies to make critical loans to their communities in support of greenhouse gas reduction projects, especially those that will benefit low-income and

[3] NAFCU, *supra* note 1. NAFCU Letter to EPA, Design and Implementation of the Greenhouse Gas Reduction Fund (Jan. 10, 2023), https://www.nafcu.org/system/files/files/NAFCU%20Letter%20to%20EPA%20-%20Legal%20Memo%20on%20Design%20and%20Implementation%20of%20GHGR%20Fund%20-%201.10.2023.pdf.

disadvantaged communities. If we can answer any questions or provide you with additional information on any of these issues, please do not hesitate to contact me at 703-842-2212 or apetros@nafcu.org.

Sincerely,

Ann C. Petros
Vice President of Regulatory Affairs