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**B. Dan Berger**  
President & Chief Executive Officer

**National Association of Federally-Insured Credit Unions**

November 9, 2020

The Honorable Dr. Mark A. Calabria  
Director  
Federal Housing Finance Agency  
400 7<sup>th</sup> Street S.W.  
Washington, D.C. 20024

### **RE: NAFCU's Regulatory Priorities**

Dear Director Calabria:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I would like to share with you the top priorities of our nation's credit unions for the remainder of 2020. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 122 million consumers with personal and small business financial service products. These priorities outline areas of the most immediate concern to credit unions as they manage the impacts of the COVID-19 pandemic going into the new year and the government-sponsored enterprises (GSEs) prepare to rebuild their capital and eventually exit conservatorship. NAFCU urges the Federal Housing Finance Agency (FHFA) to evaluate the below issues and enact the requested policy modifications to better equip our nation's credit unions to emerge healthy and strong from the pandemic and resultant economic downturn. We hope that you will work with us to address these concerns.

#### **Executive Summary**

1. *Reverse the Adverse Market Refinance Fees Policy.* The FHFA should withdraw the policy change imposing a 0.5 percent adverse market fee on certain mortgage refinance loans.
2. *Relief for Originating and Servicing Mortgages During the Ongoing Pandemic.* The FHFA should continue to extend certain flexibilities and transparently convey expectations for mortgage originators and services during the pandemic without raising unnecessary barriers for credit unions attempting to serve their members.
3. *Adopt a Strong but Reasonable Regulatory Capital Framework.* NAFCU supports the adoption of a realistic capital framework that recognizes the quality of credit union mortgages and allows the GSEs to rebuild their capital levels without impeding the availability of loans for vulnerable consumers.
4. *Preserve Access to the Secondary Market for Smaller Lenders.* Coordination with lawmakers is essential to ensuring legislative guarantees of access to the secondary market for smaller lenders like credit unions are adopted before the GSEs are released from conservatorship.

## **FHFA Regulatory Priorities**

### *Reverse the Adverse Market Refinance Fees Policy*

The proposed “adverse market fee” on mortgage refinance loans, as outlined in Freddie Mac’s Bulletin 2020-32 and Fannie Mae’s Lender Letter (LL-2020-12), remains of the upmost concern for credit unions as the economic impacts of the pandemic continue. We appreciate the FHFA’s decision to delay the new policy until December 1, 2020; however, this delay does not resolve the impact it will have on credit unions’ ability to extend mortgage credit to their communities. NAFCU urges the FHFA to reverse this policy. Although NAFCU recognizes that the GSEs must limit their losses and protect against credit and liquidity risks during the COVID-19 pandemic and subsequent economic crisis, Fannie and Freddie’s quarterly reports have remained strong throughout the year. The new adverse market fee threatens to undue the delicate balance the GSEs have obtained with the mortgage lending community. The GSEs may obtain some additional income through this fee but it will be short-lived if members slow or stop refinancing, which would then lead to a substantially negative impact on the housing market that could hurt economic recovery efforts.

Although preserving the safety and soundness of our nation’s mortgage industry is a top priority, credit unions and borrowers are already facing significant challenges due to the pandemic and economic recession and this fee poses yet another challenge. Credit unions are experiencing ongoing operational difficulties due to the pandemic and anticipate an increase in loan modifications, troubled debt restructurings, defaults, and even bankruptcies as forbearance periods end, only further amplifying these difficulties. Furthermore, institutions may also see additional forbearance applications over the next few months as nearly 1 million Americans continue to file for unemployment protection on a weekly basis. Credit unions are already burdened with making advances on the payment of principle and interest for the first four months of a mortgage sold to the GSEs as well as paying taxes, insurance costs, and other fees required on loans in forbearance. Despite these challenges, credit unions continue to step up to the plate to help their members remain in their homes; however, their capacity to do so is not infinite and this new adverse market fee endangers their ability to continue to make a difference.

Borrowers are seeking to refinance their mortgage loans to lower their interest rate, make their payments more affordable, and free up cash to spend on other needs, including adding more into their savings in the event of a pandemic-related issue (e.g., unemployment of an income earning family member). If the credit union has to pass the adverse market fee on to their members or increase the interest rate they offer members to ensure they have enough of a premium to cover the new adverse market fee, refinancing a mortgage loan may become uneconomical. This increases the likelihood that many credit union borrowers who have yet to refinance will seek a forbearance on their mortgage payments and potentially risk defaulting on their loan.

It is expected that many, if not most, credit unions will try to absorb the new adverse market fee; this will ultimately constrain their ability to make more loans to their communities. Interest rates, including mortgage rates, will remain low and as a result, demand for loans, including mortgage

loan refinances, will remain high. However, by absorbing the new adverse market fee, credit union income will shrink while operational costs remain the same, which will limit credit union growth. In turn, credit union services to their member-owners will suffer as they absorb the new adverse market fee to protect borrowers from this additional cost. On behalf of the credit union industry and their members, NAFCU strongly urges the FHFA to reverse this untimely and harmful policy change.

*Relief for Originating and Servicing Mortgages During the Ongoing Pandemic*

It is important that the FHFA and GSEs remain as transparent as possible with respect to expectations for servicers as the COVID-19 pandemic continues into 2021. Furthermore, the FHFA should consider offering assistance programs for servicers encountering difficulties making the required payments to the GSEs on mortgages and MBS. The four-month limitation on servicer payments of principal and interest on loans in forbearance was an important step towards ensuring credit unions can continue to meet their obligations while they work hard to assist their members during this difficult time. Additional assistance options may help to provide a safety net for mortgage servicers who are seeing higher rates of forbearance with borrowers that may not be able to make their payments at the end of the forbearance period. This is especially important as Congress continues to consider another stimulus package, which could include expanded forbearance opportunities for borrowers.

Similarly, the FHFA's extensions of origination and servicing flexibilities have been helpful as the pandemic has progressed. As the CARES Act provisions expire and the newly-elected Congress considers additional protections for consumers in 2021, additional assistance and flexibilities may be critical for credit unions seeking to accommodate their members. The FHFA should continue to extend its relief measures throughout the duration of the pandemic, including flexibilities establishing alternative appraisals on purchase and rate term refinance loans, alternative methods for documenting income and verifying employment before loan closing, and expanding the use of power of attorney for loan closings.

Additionally, even though NAFCU appreciated the guidance from the FHFA indicating that the GSEs can buy mortgages in forbearance, the loan level price adjustment (LLPA) for such mortgages sold to the GSEs will create challenges for lenders as the economic impacts of the pandemic continue through the remainder of 2020 and into 2021. The higher LLPA associated with selling loans to the secondary market will make it more challenging for lenders to ensure that they have ample liquidity to continue lending during a downturn and may serve to ultimately constrain new credit. NAFCU urges the FHFA to consider adopting a lower LLPA to accommodate community-based lenders like credit unions and ensure they are still able to access the secondary mortgage market and help their communities by making more loans to their members.

*Adopt a Strong but Reasonable Regulatory Capital Framework*

As outlined in a letter dated August 31, 2020, NAFCU appreciates the re-proposal of the regulatory capital framework rule and urges the FHFA to adopt a reasonable capital framework for the GSEs. Before finalizing this capital rule, the FHFA should closely evaluate NAFCU's concerns about over-capitalization, ensuring access for vulnerable borrowers, adopting a framework that more appropriately risk weights credit union mortgages, and maintaining the role of credit risk transfer transactions in the securitization process. Failing to address these concerns may make it more difficult for the GSEs to attract investors and rebuild their capital buffers. Finalizing a realistic capital framework is critical to moving the GSEs toward exiting conservatorship.

The FHFA must establish a robust capital framework that seeks to prevent another government bailout in the event of a severe stress event like the Great Recession. However, it is just as critical that capital levels are not set too high, which could impact fees charged to smaller lenders, disadvantaging those lenders by making it harder to access the secondary market and favoring larger lenders with bigger volumes of loans. Capital in the housing finance system must also be effectively deployed to ensure affordable housing is available for American consumers.

Similarly, the FHFA must ensure its capital framework aligns with actual risks posed and appropriate reductions of that risk. Over-capitalizing the GSEs, over-estimating the risks of certain loans, and undervaluing credit risk transfer transactions will only serve to harm underserved, low-income and moderate-income consumers and the credit unions which exist to serve them. The FHFA must thoroughly consider the impact of over-capitalization on the cost of guarantee fees and the resulting cost and availability of mortgage loans for the most vulnerable consumers. NAFCU urges the FHFA to modify its rulemaking to address these concerns before finalization.

*Preserve Access to the Secondary Market for Smaller Lenders*

Although NAFCU supports strong capital requirements, the rebuilding of capital at the GSEs, and the ultimate release of the GSEs from conservatorship, credit unions deserve certain statutory guarantees to preserve their ability to access the secondary market with fair pricing. The FHFA should work with lawmakers to ensure such legislative guarantees are adopted before the GSEs are released from conservatorship to guarantee unfettered access for smaller lenders like credit unions. Regarding broader housing finance reform efforts, the U.S. government should establish an explicit government guarantee on the payment of principal and interest on mortgage-backed securities (MBS). The explicit guarantee will provide certainty to the market, especially for investors who will need to be enticed to invest in MBS in a reformed housing finance system and facilitate the flow of liquidity through the market.

NAFCU will continue to urge Congress to take up housing finance reform efforts including establishing guaranteed access to the secondary market and issuing an explicit government guarantee on the payment of MBS. The FHFA should continue to work with lawmakers as they consider questions of broader housing finance reform. In the meantime, NAFCU cautions against completing any substantial administrative reform of the GSEs, such as release from

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conservatorship, without legislative action to guarantee these protections for small lenders. Until Congress acts, the GSEs should move toward becoming stable and self-funded, without relying on their U.S. Department of the Treasury lines of credit. A regulatory capital framework that ensures the long-term future of the GSEs, recognizes the quality of credit union mortgage loans, preserves affordable access to housing for communities across the country, and protects the American taxpayer is a necessary component of achieving a self-sufficient housing finance system.

## **Conclusion**

NAFCU would like to thank the FHFA for its efforts to provide timely COVID-19 relief measures. Over the remaining weeks in 2020, NAFCU recommends that the FHFA address the critical issues outlined above, including reversing the adverse market refinance fee policy, providing additional relief for mortgage originators and servicers during the pandemic, adopting a strong but reasonable capital framework, and coordinating with lawmakers to preserve access to the secondary market for smaller lenders. Thank you for your consideration and 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 me or Ann Kossachev, NAFCU's Director of Regulatory Affairs, at 703-842-2212 or [akossachev@nafcu.org](mailto:akossachev@nafcu.org).

Sincerely,

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

B. Dan Berger  
President and CEO