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National Association of Federally-Insured Credit Unions

Greg Mesack
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April 25, 2023

The Honorable Patrick McHenry
Chairman
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Re: Tomorrow's Markup of H.R. 2798, the CFPB Transparency and Accountability Reform Act

Dear Chairman McHenry and Ranking Member Waters:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) in conjunction with tomorrow's markup regarding reforms to the Consumer Financial Protection Bureau (CFPB). As you know, 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 service products. We applaud the Committee for your work and recognition of the need for reform at the CFPB. We look forward to working with you to that end.

During consideration of financial reform, NAFCU was concerned about the possibility of overregulation of good actors such as credit unions. Unfortunately, our concerns were proven true. While it is clear the CFPB has done some good, its primary focus should be on regulating the unregulated and the bad actors, not adding new burdens on credit unions that already fall under a prudential regulator.

The impact of this growing compliance burden from the CFPB is evident as the number of credit unions continues to decline. Since the passage of the Dodd-Frank Act, we have lost over 35 percent of all credit unions to mergers. The overwhelming majority of these were smaller institutions under \$100 million in assets that simply did not have the economies of scale to absorb the rising costs of compliance.

Credit unions are subject to strict field of membership and capital restrictions, as well as numerous consumer protection provisions in the Federal Credit Union Act, such as an interest rate ceiling, a prohibition on prepayment penalties, and a member business lending cap. As such, the CFPB must be cognizant of the unique characteristics of the credit union industry and the benefits credit unions provide to consumers.

NAFCU is pleased to support the CFPB Transparency and Accountability Reform Act and urges swift action to pass these common sense and much needed reforms.

CFPB Commission

NAFCU has long held the position that, given the broad authority and awesome responsibility vested in the CFPB, a five-person commission has distinct consumer benefits over a single director. Regardless of how qualified one person may be, including the current leadership of the agency, a commission would allow multiple perspectives and robust discussion of consumer protection issues throughout the decision-making process. Additionally, a commission helps ensure some continuity of expertise and rulemaking. The current single director structure can lead to uncertainty during the transition from one Presidential administration to another. The U.S. Supreme Court highlighted this fact when it released a decision in *Seila Law v. the CFPB* that found the single director, removal only for “just cause” structure of the CFPB to be unconstitutional. It is with this in mind that we urge support for Title I of H.R. 2798, the CFPB Transparency and Accountability Reform Act, that would replace the current single director with a five-member commission appointed by the President.

Appropriations for the CFPB

The CFPB has unprecedented power and enforcement authority with nearly no accountability under its guaranteed funding mechanism. Subjecting the CFPB to the congressionally-driven appropriations process will give Congress much needed oversight and incentivize the Bureau to focus on true consumer abuse and work to uphold congressional intent. This would all but guarantee that it considers the burdens potential rules would place on community institutions and tailor them accordingly. The CFPB’s actions and policies have the ability to substantially affect large swaths of the economy. As such, we urge Congress to make the agency more transparent and accountable by supporting Title II of H.R. 2798, the CFPB Transparency and Accountability Reform Act, that would subject the CFPB to the appropriations process.

Office of Inspector General at the CFPB

The creation of an office of the Inspector General (OIG) at the CFPB is another way to bring much needed oversight and accountability to the agency. The lack of a designated IG, in addition to guaranteed funding, is dangerous and unnecessarily gives one person the power to act unilaterally and unencumbered. It is absolutely essential that an agency with such unprecedented power and authority is transparent and accountable. Installing a designated OIG at the CFPB is a simple and straightforward way to ensure that unelected bureaucrats focus on congressional intent and holding the truly bad actors to account. We urge support for Title III of H.R. 2798, the CFPB Transparency and Accountability Reform Act, that would do just that.

CFPB Dual Mandate and Economic Analysis

As mentioned previously, credit unions were not involved in the activities and practices that led to the financial crisis yet are burdened by many of the regulations meant to reign in those that did. Unfortunately, these regulations often harm those individuals the agency means to protect, American consumers. Instead of continuing the one-size-fits-all regulating at the CFPB, it is our hope that the Bureau will consider ways to improve the rules that are more harmful than helpful and continue to do so as environments change. Title IV of H.R. 2798, the CFPB Transparency and

Accountability Reform Act, would redirect the CFPB's mission to focus on competition and choice. The provision would also establish the Office of Economic Analysis within the Bureau to review and assess guidance, orders, rules, and regulations. The analysis produced by this office would then be used to provide transparency regarding how any action taken by the Bureau has or will impact competition, choice, and access to financial products. Each action would be reviewable along a set timeline so that Congress and consumers can evaluate the effectiveness of any given action. This will provide yet another layer of transparency owed to the American people. NAFCU urges support for this provision.

Cost-Benefit Analysis

Cost-benefit analysis is a critical tool for regulators to compare the costs of implementation and compliance with the overall benefits of any regulation. Regulators must understand the overall impact their rulemakings will have on an industry before implementation to prevent unintended consequences detrimental to communities and families. Requiring the CFPB to enhance its rulemakings to include cost-benefit analysis will help to protect institutions and businesses that simply can't keep up with the rapidly expanding regulatory regime. It would also ensure that the Bureau is held to the same standard as other agencies and provide additional protection against one-size-fits-all regulations that are killing small businesses and credit unions. NAFCU urges your support for Title V of H.R. 2798, the CFPB Transparency and Accountability Reform Act, that will require cost-benefit analysis for any rulemaking and provide one more opportunity for transparency at the Bureau.

Accountability to Small Businesses

NAFCU has repeatedly urged the CFPB to tailor its rules as narrowly as possible to achieve its objective. Congress intended the Small Business Regulatory Enforcement Fairness Act (SBREFA) to enhance and improve the ability of federal agencies to thoroughly understand how their rules impact small entities and use that information to protect those entities from unnecessary burdens. Unfortunately, the SBREFA process has turned into a check-the-box practice where small businesses provide extensive feedback rarely adopted in the final rulemaking. More recently, however, the CFPB went even further by not convening the required SBREFA panel at all for its proposal related to credit card late fees. Title VI of H.R. 2798, the CFPB Transparency and Accountability Reform Act, will require the necessary tailoring of regulations under SBREFA panel review and require justification when they reject any recommendations by the panels. NAFCU urges your support for this provision.

Use of Small Entity Exemption Authority

In addition to regulatory flexibility Title VI provides, NAFCU believes that the CFPB should utilize its statutory exemption authority to recognize the unique nature of and constraints faced by the credit union industry. The CFPB has provided exemptions in the past based on an entity's asset size. The small entity exemption authority was used for the qualified mortgage (QM) rule and the

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Home Mortgage Disclosure Act (HMDA) rule. NAFCU encourages Congress to further question why the CFPB has not utilized this dormant authority and to implore it to resurrect this authority under section 1022 of the Dodd-Frank Act.

While there are more issues and reforms that NAFCU is interested in pursuing, H.R. 2798 is an excellent step towards an accountable and transparent CFPB that works as intended. We thank you for the opportunity to share our views and look forward to working with you to pass important and commonsense legislation. Should you have any questions or require any additional information, please contact me or Chad Adams, NAFCU's Senior Director of Legislative Affairs, at (703) 842-2265 or cadams@nafcu.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Mesack". The signature is fluid and cursive, with the first name "Greg" being more prominent than the last name "Mesack".

Greg Mesack

cc: Members of the Committee on Financial Services