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National Association of Federally-Insured Credit Unions

February 18, 2020

Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20224

RE: Certain Remuneration in Excess of \$1,000,000 Under Internal Revenue Code Section 162(m) (Docket No. IRS-2019-0057)

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Internal Revenue Service's (IRS) notice of proposed rulemaking regarding certain employee remuneration under Internal Revenue Code (IRC) section 162(m). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve nearly 120 million consumers with personal and small business financial service products. This proposed rule implements amendments made by the *Tax Cuts and Jobs Act* (TCJA) and is applicable to publicly held corporations ("for-profits") as defined in section 162(m). Although the proposed rule does not directly apply to credit unions, NAFCU wishes to reiterate concerns over the inequitable application of employee remuneration regulations for not-for-profit entities; in particular, the grandfathering of existing nonqualified deferred compensation plans. In anticipation of the IRS publishing proposed regulations covering not-for-profits, NAFCU asks for parity with for-profit corporations as laid out in this proposal.

Recently, Congress repealed a provision charging an excise tax to not-for-profits for unrelated business income tax (UBIT) on employee fringe benefits, including parking and transit. NAFCU supported and worked with members of Congress in repealing this provision. The passage of the *Economic Mobility Act* removing UBIT provisions is evidence that the legislative intent of the TCJA is not to burden not-for-profits; however, the disparity regarding employee remuneration between for-profit corporations and not-for-profits presents a burden that the IRS must address. Currently, credit unions adhere to IRS Notice 2019-09 when looking for guidance regarding employee remuneration. IRS Notice 2019-09 provides interim guidance for IRC section 4960, added by the TCJA. This notice does not provide credit unions with the ability to grandfather existing employee remuneration contracts executed on or before November 2, 2017.

Employee remuneration in the form of a deferred compensation plan helps attract talented executives with community-focused leadership skills to credit unions. However, the TCJA's changes to certain types of employee remuneration have caused concern over attracting and retaining such talent. In addition, assessing an excise tax on deferred compensation plans increases credit union expenditures. As not-for-profit, member-owned financial institutions, credit unions

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provide benefits to their members and communities. Additional expenditures deplete resources that could otherwise help credit unions serve their members and communities. Member-owners receive benefits in the form of dividends, therefore additional taxes imposed on credit unions means less money in the pockets of members and in the communities in which they live and work.

NAFCU reiterates its call for the IRS to evaluate its authority to provide for the grandfathering of certain employee remuneration contracts, including nonqualified deferred compensation plans, executed on or before November 2, 2017. If the statutory authority is not clear, NAFCU asks that the IRS interpret the statute to allow the agency the authority to provide parity between not-for-profits and for-profit corporations. Alternatively, NAFCU suggest that the IRS support congressional efforts to introduce a technical corrections bill that would allow for this much needed parity. Congress has indicated its intention to work on a technical corrections bill to fix errors and unanticipated complications, including with recent legislation removing UBIT provisions.

NAFCU appreciates the opportunity to share its members' views on this matter. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2249 or kschafer@nafcu.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Kaley Schafer".

Kaley Schafer
Regulatory Affairs Counsel