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B. Dan Berger
President & Chief Executive Officer

National Association of Federally-Insured Credit Unions

January 16, 2018

The Honorable David J. Kautter
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

Re: Nonqualified Deferred Compensation Plans

Dear Acting Commissioner Kautter:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally-insured credit unions, I am writing to you regarding the Tax Cuts and Jobs Act (TCJA); specifically, the provision that imposes a 21 percent excise tax on executive compensation over \$1 million, including certain nonqualified deferred compensation plans under 26 U.S.C. § 457(f). This provision in the TCJA has already caused immense confusion and concern in the credit union industry. NAFCU's member credit unions are uncertain how this provision will be implemented and would like assistance from the IRS in preparing for its implementation. NAFCU is requesting that the Internal Revenue Service (IRS) (1) evaluate its authority to "grandfather" employment contracts entered into on or before November 2, 2017; (2) support a technical corrections bill in Congress, especially with regard to such grandfathering and other issues affecting credit unions; and (3) provide clarifications regarding which forms credit unions should use to comply with the new excise tax on certain nonqualified deferred compensation plans.

As not-for-profit, cooperative financial institutions, credit unions provide huge benefits to their communities, particularly communities of underserved populations. Deferred compensation plans help credit unions attract talented executives to further their community-focused missions and help expand access to credit to the individuals who need it most. NAFCU is pleased that §457(b) plans remain untouched in the TCJA, but changes to the treatment of certain nonqualified deferred compensation plans under § 457(f) have sparked concerns about talent and the likelihood that credit unions will be forced to expend resources that could be better used to help their communities. Credit unions have finite resources, so paying a tax on these deferred compensation plans will only impose increased strain.

One of the greatest concerns in the TCJA is the lack of parity between for-profit corporations and not-for-profits with respect to the treatment of existing nonqualified deferred compensation plans. NAFCU requests that the IRS evaluate its authority to provide for the "grandfathering" of

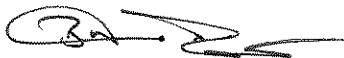
certain nonqualified deferred compensation plans in employment contracts entered into on or before November 2, 2017. The TCJA exempts existing corporate executive deferred compensation contracts entered into on or before this date from the deduction limit but there is no similar provision for not-for-profit contracts. Such a grandfathering provision would offer those individuals currently at credit unions certainty regarding the benefits they were promised and contracted for when they began working as an executive at a credit union. This would also provide these executives with an incentive to remain in the credit union industry and continue to provide communities with their knowledge and expertise. NAFCU encourages the IRS to evaluate its authority to provide such grandfathering and, if permissible, move forward with regulations to grandfather plans entered into on or before November 2, 2017.

NAFCU understands that the IRS, absent an act of Congress, likely does not have the authority to expressly exempt credit unions from this excise tax provision; however, Congress has indicated that it intends to work on a technical corrections bill to fix errors and unanticipated complications in the TCJA sometime in the coming months. NAFCU encourages the IRS to support this process and the ultimate technical corrections bill, especially any corrections with respect to creating parity between not-for-profits and for-profit corporations regarding the grandfathering of employment contracts. The IRS should also work to identify issues that Congress should review and consider fixing or altering, especially those that affect small financial institutions like credit unions. NAFCU asks the IRS to engage stakeholders throughout this process to better understand potential conflicts and difficulties in the implementation of the TCJA.

In the meantime, NAFCU urges the IRS to provide credit unions with detailed clarifications regarding which forms credit unions will have to use to file taxes on such plans because they are exempt from annual federal income taxes. Moreover, credit unions have questions regarding deferred compensation plans that state the employee is responsible for all potential taxes, including an excise tax such as the one now imposed by the TCJA. In such a situation, the credit union would likely still be required to pay the excise tax, but the employee may be required to reimburse the credit union for this tax. As there are currently no instructions or guidance that speak to this scenario, NAFCU and its member credit unions request the IRS provide clarification on this point to assist credit unions in navigating this conundrum.

If you have any questions or would like us to provide you with further information, please do not hesitate to contact me or Carrie Hunt, NAFCU's Executive Vice President of Government Affairs and General Counsel, at (703) 842-2234.

Sincerely,



B. Dan Berger
President and CEO