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B. Dan Berger
President & Chief Executive Officer

National Association of Federally-Insured Credit Unions

December 15, 2021

The Honorable Todd M. Harper
Chairman
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314

RE: Prompt NCUA Action Needed on Digital Asset Issues

Dear Chairman Harper:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I write to you today to urge that the National Credit Union Administration (NCUA) take prompt, decisive action on a range of important digital assets issues. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 127 million consumers with personal and small business financial services products. Digital asset issues are of uniquely significant and growing importance to credit unions and their members, and credit unions should not be forced to suffer the increasingly untenable competitive disadvantages arising out of the actions of other federal financial regulators and compounded by the NCUA's continued silence. The NCUA should both promptly respond to stakeholders' comments to the NCUA's Requests for Information and Comment on Digital Assets and Related Technologies (Digital Assets RFI) and more fully and proactively engage the President's Working Group on Financial Markets (PWG) and other federal financial regulators on digital asset issues.

NAFCU appreciates the NCUA's dedication to its digital assets education evidenced by its Digital Assets RFI and recognizes that appropriate regulation is most often the product of much research, debate, and reflection. However, the NCUA remains largely silent on important digital asset issues roughly 17 months after the Office of the Comptroller of the Currency (OCC) concluded in Interpretive Letter 1170 that national banks may provide customers cryptocurrency custody services. The OCC subsequently concluded in Interpretive Letter 1172 that national banks may hold stablecoin issuers' cash reserves and in Interpretive Letter 1174 that banks may use independent node verification networks and stablecoins to perform bank-permissible activities. As explained more fully in NAFCU's official comment to the NCUA's Digital Assets RFI, NAFCU urges the NCUA to promptly issue Letters to Credit Unions that confirm a credit union may host digital wallets for members and that a credit union may facilitate members' buying, holding, selling, transferring, and exchanging of digital assets through a third-party broker-dealer. NAFCU also urges the NCUA to promptly issue a Letter to Credit Unions confirming that credit unions may hold stablecoin issuers' cash reserves.

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Additionally, the NCUA cannot risk other federal financial regulators effectively and ineptly usurping the NCUA's regulation of credit unions on issues inextricably linked to the safety and soundness of the American credit union system on which so many rely. Though both the Federal Deposit Insurance Corporation (FDIC) and the NCUA released Digital Assets RFIs in 2021, only the FDIC joined the PWG and the OCC in publishing the *Report on Stablecoins* (Report). The Report recommends that Congress enact comprehensive digital assets legislation that, among other things, requires all payment stablecoin issuers to be insured depository institutions.

In describing depositors' access to federal deposit insurance and their financial institutions' access to emergency liquidity and Federal Reserve services, the Report cites the *Federal Deposit Insurance Act* definition of an insured depository institution, which does not include credit unions. By appearing to adopt this narrow definition, the Report risks legislators and other federal financial regulators interpreting the Report as recommending that Congress enact legislation requiring a stablecoin issuer be or become a bank – not either a bank or a credit union. In less than two months, the Report has drawn additional comment not only from the OCC and the FDIC but also from the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC).

Acting Comptroller of the Currency Michael J. Hsu has urged that federal financial regulators must work together to ensure stablecoins may “grow and evolve safely.” FDIC Chairwoman Jelena McWilliams commented recently that the FDIC is trying to figure out how the agency may best “apply the deposit insurance scheme to different potential stablecoin arrangements.” Subsequent comments made by SEC Chairman Gary Gensler and Acting CFTC Chairman Rostin Behnam make clear that while the two may disagree as to which of their agencies is the appropriate regulator of any particular digital asset, the two heartily agree with the Report's finding that their agencies have “broad enforcement, rulemaking, and oversight authorities that may address certain of these concerns.”

Put plainly, banks not only have nearly a year and a half head start in more fully meeting their customers' increasing digital asset demands and integrating related technologies into everyday operations, but other federal regulators appear poised to effectively hand banks the entire American stablecoin market. If they are to avoid shaping digital assets' integration into the broader economy in ways that risk undermining the vitality and viability of the American credit union system, other federal financial regulators must have the benefit of the NCUA's partnership, insight, and expertise. The safety and soundness of the credit union system, as you have made poignantly clear throughout your service at the NCUA, depends greatly on regulators keeping an eye to the future. As our economy evolves, credit unions simply must have the regulatory clarity necessary to fully serve their members.

Thank you for your commitment to embracing emerging technologies and innovations that support the credit union industry's stability and encourage its growth. I urge you to act quickly, both within the NCUA and in coordination with the PWG and other federal financial regulators, to help ensure credit unions may compete on a level digital assets playing field and are not excluded from foundational federal digital assets regulation and legislation. I look forward to continuing to

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discuss digital assets and related technologies with you and the other NCUA Board members. If you have any questions, please do not hesitate to contact me directly.

Sincerely,

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

B. Dan Berger
President and CEO