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National Association of Federally-Insured Credit Unions

B. Dan Berger
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The Honorable Michael Crapo
Chairman
Committee on Banking, Housing,
& Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing,
& Urban Affairs
United States Senate
Washington, DC 20510

RE: NAFCU Proposals to Help Foster Economic Growth

Dear Chairman Crapo and Ranking Member Brown:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only trade association exclusively representing the federal interests of our nation's federally-insured credit unions, I write today in conjunction with your request for ideas and proposals to help foster economic growth. We appreciate the committee's focus on this important issue.

NAFCU has always believed that credit unions play an essential and vital role in the economic health of local communities. This was demonstrated during the recent financial crisis when credit unions were able to continue to lend and help credit worthy consumers and small businesses during difficult times, often when no one else would. Despite the fact that credit unions played no part in causing the financial crisis, they are still heavily regulated and affected by many of the rules meant for those entities that did. Unfortunately, every credit union dollar spent on compliance with regulatory burdens is a dollar that can't be used to help consumers through member service, better rates or additional money to lend.

During the consideration of financial reform, NAFCU was concerned about the possibility of overregulation of good actors, such as credit unions, and this is why NAFCU was the only credit union trade association to oppose the Consumer Financial Protection Bureau (CFPB) having authority over credit unions. Unfortunately, many of our concerns about the increased regulatory burdens that credit unions would face under the CFPB have proven true. As expected, the breadth and pace of the CFPB's rulemaking is troublesome, and the unprecedented new compliance burden placed on credit unions has been immense. NAFCU continues to believe that credit unions should be exempted from CFPB rulemaking, with authority returned to the National Credit Union Administration (NCUA). As you examine the federal financial regulatory system, we urge you to support such a reform.

The impact of the growing compliance burden is evident as the number of credit unions continues to decline. Since the second quarter of 2010, we have lost more than 1,500 federally-insured credit unions – over 20% of the industry. The overwhelming majority of these were smaller institutions below $100 million in assets. While it is true that there has been a historical consolidation trend in the industry, the passage of the *Dodd-Frank Act* has accelerated this trend. In 2016, the industry lost 5.6

percent of credit unions, which represents the highest rate of consolidation in a single year since World War II. The fact is that many smaller institutions simply cannot keep up with the new regulatory tide and have had to merge out of business or close their doors. This is why regulatory relief remains a top priority for our nation's credit unions.

It is with this in mind that NAFCU would like to offer the following ideas to help foster economic growth and regulatory relief:

I. Provide Greater Clarity to CFPB's 1022 Exemption Authority

NAFCU believes that Section 1022 of the *Dodd-Frank Act* gives the CFPB broad exemption authority to exempt classes of institutions, including credit unions, from CFPB rules on a case-by-case basis. We believe that this was also the congressional intent of this provision. However, CFPB Director Richard Cordray has testified before Congress that he believes he does not have the authority to outright exempt credit unions from various CFPB rules under Section 1022. The failure of the Bureau to provide outright exemptions for credit unions to various rules has greatly increased the compliance burden on the credit union industry, as credit unions are now forced to spend time and resources reviewing rules to see if they meet any arbitrary exemption threshold the Bureau may set. Time and money spent on this effort takes away from economic benefits that credit unions could be providing to their members.

Last year, a bipartisan group of 70 Senators sent a letter to Director Cordray urging him to do more with the authority under Section 1022 to reduce the burden on community institutions, such as credit unions. A copy of that letter is attached with this submission. We would urge you to adopt the suggested legislative language found in Attachment A to clarify the ability of the CFPB to specifically exempt credit unions from CFPB rules. NAFCU also supports the language found in H.R. 1264, the *Community Financial Institution Exemption Act*, introduced by Representative Roger Williams earlier this year.

II. Make Common-Sense Improvements to the CFPB

We believe that one way to improve the Bureau would be to change the leadership structure from a single director to a five member commission appointed by the President. 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, a commission would allow multiple perspectives and robust discussion of consumer protection issues throughout the decision making process.

We also believe that the main focus of the CFPB should be on unregulated entities operating in the financial services arena and other significant market actors that have a national impact, and thus we believe that the supervision threshold for the CFPB should be raised to $150 billion and indexed for inflation. Making this change would allow functional regulators to focus on community and regional institutions, while allowing the CFPB to focus on entities that are otherwise unregulated and keep a national perspective.

Legislative language for these ideas is found in Attachment B.

III. Require the CFPB to Provide Guidance or Rulemaking for its UDAAP Authority

Uncertainty stemming from CFPB's authority to take action on entities committing unfair, deceptive, or abusive acts or practices (UDAAP) can prevent institutions from providing services that consumers may want. Credit unions want to comply and provide the services that their members want and need. However, when the CFPB does not provide clarity in regards to UDAAP, either through rulemaking or guidance, economic opportunity is stymied as institutions fear the CFPB will only regulate through enforcement action. We would urge the adoption of suggested legislative language in Attachment C to require the CFPB to provide more clarity and guidance to those they regulate.

IV. Require the CFPB to Better Tailor Regulations and Subject Them to Review

NAFCU supports measures that would require the CFPB to better tailor its regulations to institutions based on their size and risk, and provide greater review and scrutiny. Despite credit unions being smaller and less risky than mega-banks, they have too often found themselves subject to burdensome new regulations designed for big banks, negatively impacting their ability to serve their members and foster economic development. We would urge you to adopt language from the *Taking Account of Institutions with Low Operation Risk* (TAILOR) *Act* and from the *Regulations From the Executive in Need of Scrutiny* (REINS) *Act*, as well as subjecting the CFPB to the *Economic Growth and Regulatory Paperwork Reduction Act* (EGRPRA) review.

V. Repeal the Durbin Debit Interchange Amendment

The interchange price caps passed as part of the *Dodd-Frank Act* have failed to produce the consumer benefits that proponents promised. This provision has essentially been a windfall to merchants and their stockholders, while costing credit unions and their members billions of dollars that could have been used to help foster economic growth through better rates and more loans. We urge you to repeal the debit interchange provision found in the *Dodd-Frank Act* by adopting the legislative language found in Attachment D.

VI. Make Improvements to Field-of-Membership Restrictions for Credit Unions

We urge you to adopt language allowing credit unions of all charter types to add underserved areas to their fields of membership (FOM). Doing so would go a long way in removing the barriers that limit consumers' access to essential financial services and open up the economic benefits of credit unions to more Americans.

The proposed language found in Attachment E would allow existing non-multiple-common-bond credit unions to petition NCUA to allow a credit union to add underserved areas to their existing field of membership. It would require the credit union to maintain a method for serving those underserved areas and be subject to NCUA reporting requirements.

NAFCU also supports other updates to FOM restrictions, such as removing the word "local" from the phrase "well-defined, *local* community" in Section 109(b)(3) of the *Federal Credit Union Act.*

VII. Provide Credit Unions Parity in the Treatment of Residential Loans

NAFCU urges you to exempt loans for one-to-four-unit non-owner occupied dwellings from the credit union member business lending (MBL) definition. The proposal found in Attachment F would allow credit unions to treat loans that qualify for the exemption as residential loans with lower interest rates—similar to how banks make those loans to small businesses—and not have to count them toward their MBL cap. This would free up capital for additional lending to small businesses to help foster economic growth.

This idea was recently introduced as bipartisan legislation, S. 836, the *Credit Union Residential Loan Parity Act*, by Senators Ron Wyden and Lisa Murkowski. NAFCU would also urge you to eliminate the arbitrary and outdated credit union member business lending cap.

VIII. Capital Reforms for Credit Unions

Under current law, a credit union's net worth ratio is determined solely on the basis of retained earnings as a percentage of total assets. Because retained earnings often cannot keep pace with asset growth, otherwise healthy growth can dilute a credit union's capital ratio and trigger prompt corrective action (PCA) rules. NAFCU supports removing this artificial constraint by empowering NCUA to authorize qualified credit unions access to supplemental capital. The objective of supplemental capital is to ensure credit unions can continue to accept new deposits, especially during tough economic times, when demand for loans and other income-generating services are low, and to provide the NCUA with the same authority and flexibility to adjust capital requirements in response to changes in economic conditions as Congress has provided to federal banking regulators.

NAFCU also supports congressional action to suspend the implementation of NCUA's recent risk-based capital rule, to allow the new leadership at the agency time to review the rule and request any statutory changes that the agency deems necessary to institute a capital system for credit unions that accurately accounts for risk.

Legislative language in regards to these capital reforms is found in Attachment G.

Additional Areas for Regulatory Relief

Finally, there are a number of additional areas where credit unions could use regulatory relief to help them better serve their members and foster economic development. These include, but are not limited to, requiring better cost-benefit analysis by regulators, improvements to the Qualified Mortgage (QM) rule – such as a safe-harbor for loans held in portfolio, improvements to the TILA/RESPA rule, improvements to the CFPB's new *Home Mortgage Disclosure Act* (HMDA) rule, and providing greater clarifications and fixes to DoD's recent *Military Lending Act* rule. Comprehensive relief in these areas will go a long way to improving the ability of credit unions to foster economic growth and better serve their over 106 million members.

We thank you for the opportunity to provide these ideas. We look forward to working with the committee on this effort. Should you have any questions or require any additional information please contact me or Brad Thaler, NAFCU's Vice President of Legislative Affairs, at 703-842-2204 or bthaler@nafcu.org.

Sincerely,

B. Dan Berger
President and CEO

cc: Members of the Committee on Banking, Housing, and Urban Affairs

Attachments