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National Association of Federally-Insured Credit Unions

August 2, 2021

The Honorable Sherrod Brown	The Honorable Pat Toomey
Chairman	Ranking Member
Committee on Banking, Housing,	Committee on Banking, Housing,
& Urban Affairs	& Urban Affairs
U.S. Senate	U.S. Senate
Washington, DC 20510	Washington, DC 20510

Re: Tomorrow's Hearing, "Oversight of Regulators: Does our Financial System Work for Everyone?"

Dear Chairman Brown and Ranking Member Toomey:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing to share NAFCU's perspective on the issues before the Committee as part of Tuesday's hearing, "Oversight of Regulators: Does our Financial System Work for Everyone?" NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 125 million consumers with personal and small business financial service products. We thank you for your continued focus on oversight of the National Credit Union Administration (NCUA) and other prudential regulators. As the Committee carries out its oversight functions, we urge you to keep our concerns on these key issues in mind.

The National Credit Union Share Insurance Fund (SIF)

While NAFCU applauds NCUA Chairman Todd Harper, the NCUA Board, and the agency's leadership for their prudent oversight of the SIF during the pandemic, we do not think changes to the structure of the SIF or a premium charge on credit unions are warranted at this time. The fact that the SIF has fared so well during the past 16 months provides ample evidence that the fund is strong and that credit unions were well-capitalized and had strong balance sheets entering the crisis. This provided them with the necessary scope to extend assistance to their members during the pandemic. The current language of the *Federal Credit Union Act* (FCU Act) creates this strong insurance fund for credit unions.

The FCU Act creates a SIF that is structured fundamentally differently than the Deposit Insurance Fund (DIF) run by the FDIC. NAFCU is opposed to any efforts that call for legislative changes to the FCU Act to give the NCUA the powers to manage the SIF similar to the DIF, such as allowing new premium assessments when they are not needed, removing upper limits on the normal operating level, or making changes that threaten the mutual nature of the fund. The FCU Act recognizes the importance of not hitting credit unions and their members with an unnecessary premium through very specific language that gives the NCUA an eight-year (or longer) window to restore the SIF equity ratio to 1.2 percent should it fall below that level. We caution against any calls for statutory changes to the SIF that go against the spirit of this provision in the Act—a provision that is designed not only to keep credit unions healthy, but also to keep funds available to credit union members.

However, NAFCU has called for additional investment authorities to bolster credit unions' ability to manage their money and shares on deposit, as well as to protect the equity ratio of the SIF. Credit unions are more limited in what they can invest in than other institutions under the FCU Act, and we ask that you consider authorizing additional investment authorities for credit unions. For example, currently natural person credit unions are not permitted to invest in asset-backed securities although credit union service organizations are permitted to do so. Similarly, federal credit unions are not explicitly permitted to invest in corporate bonds although some state laws permit state-chartered credit unions to do so. NAFCU encourages Congress to consider language to permit such investments to ensure the safety and soundness of the industry.

NAFCU Opposes Granting NCUA Oversight Authority Over Third-Party Vendors

NAFCU and our member credit unions believe that cybersecurity, including the security of vendors that credit unions do business with, is an important issue. However, we are opposed to granting additional authority to the NCUA to examine third parties at this time. NAFCU believes in a strong NCUA, but we also believe that the NCUA should stay focused on where their expertise lies—regulating credit unions. Credit unions fund the NCUA budget. Implementing such new authority for the NCUA would require significant expenditures by the agency. The history of the NCUA's budget growth has shown that these costs would ultimately be borne by credit unions and their members.

There are other tools already in place for the agency to get access to information about vendors. We believe the agency's time and resources are better focused on reducing regulatory burden by coordinating efforts among the financial regulators. The NCUA sits on the Federal Financial Institutions Examination Council (FFIEC) with the Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), and the Federal Reserve. The FFIEC was created to coordinate examination findings and approach in the name of consistency and to avoid duplication. This means that as a member of the FFIEC, the NCUA should be able to request the results of an examination of a core processor from the other regulators and not have to send another exam team from the NCUA into their business and duplicate an examination. This would seem to be an unnecessary burden on these small businesses. Additionally, if the NCUA did its own examination, the likelihood of finding anything the other regulators did not would seem to be close to nil.

Instead of granting the NCUA vendor examination authority, Congress should encourage the agency to use the FFIEC and gain access to the information on exam findings on companies that have already been examined by other regulators. This would address the NCUA's concerns without creating additional costs to credit unions and increasing regulatory burdens on credit unions and small businesses.

The Durbin Amendment

NAFCU opposes any effort to extend debit interchange price caps or routing requirements to credit cards. Since the passage of the Durbin amendment on debit interchange rates in the *Dodd-Frank Act*, the retail industry has not followed through on their promise to pass on interchange fee savings to their customers. Now they are asking for the same failed policies to be extended or expanded. This would cause irreparable harm to credit unions and could damage the availability of credit to consumers. The electronic payments system is a two-sided market, with consumers on one side

and merchants on the other. Both sides benefit from the arrangement, with card networks setting interchange rates based on the cost of doing business, and the benefit to consumers and merchants. The credit card system allows consumers to purchase goods and services from merchants that they may not be able to otherwise. The pandemic provided even more evidence that the electronic payments system offers real value to merchants and consumers alike. Ultimately, merchants receive far more value from accepting electronic payments than they pay in interchange fees. Any new caps or requirements impacting interchange fees would only hurt community institutions such as credit unions and the American consumer.

NAFCU Supports Allowing Credit Unions to Do More to Help Underserved Populations

NAFCU supports expanding the ability of credit unions to add underserved areas to their field of membership (FOM), such has been proposed in draft legislation by the House Financial Services Committee. In 1998, as part of the *Credit Union Membership Access Act*, Congress provided federal credit unions with the ability to add underserved areas to their FOM. However, subsequent legal challenges by the banking industry over the reading of the statute led the NCUA to limit this authority to only multiple common bond credit unions in 2006.

As Congress grapples with ways to ensure that underserved and unbanked populations have access to affordable financial services, credit unions want to be able to help. Unfortunately, many credit unions are limited by the restriction on adding underserved areas to their FOM. One area where this legislation would be extremely helpful is in rural areas. According to a recent report by the Federal Reserve, between 2012–2019 credit unions grew their branch presence in rural areas by 2 percent, while community banks decreased rural branches by 5 percent and large banks decreased rural branches by 19 percent. Credit unions are proud to be at the forefront of efforts to expand financial services access to rural areas, many of which are underserved, and want to do more. However, not all credit unions can add underserved areas to their field of membership, making it challenging for some to expand in rural areas. We urge the Committee to support legislation that would allow all types of credit unions to add underserved areas to their FOM.

NAFCU Supports Loan Maturity Flexibility for Credit Unions

When it comes to lending, we ask that you consider legislation to provide credit unions with relief from the outdated 15-year general maturity limit found in the FCU Act for most credit union loans. This cap prevents credit unions from extending safe and sound loan products that their members want and need. For example, credit unions frequently hear from small businesses that a 20-year loan would be preferable in terms of a lower monthly payment, but because of the 15-year maturity limit, small businesses often turn to banks in order to get those loans. However, with credit likely to be constrained for the foreseeable future, these loans will be harder to get. We ask that you give credit unions this flexibility so they can work with their members and provide them with the funds they need as we face the recovery ahead. NAFCU strongly supports S. 762, the *Expanding Access to Lending Options Act*, introduced by Senators Tim Scott (R-SC) and Catherine Cortez Masto (D-NV), which would address this issue.

NAFCU Supports Governance Modernization for Credit Unions

NAFCU supports S. 1767, the *Credit Union Employee and Member Safety Act*, introduced by Senators Tina Smith (D-MN) and Ben Sasse (R-NE), which would help protect credit unions and their members from abusive, fraudulent, or criminal activity. Currently, federal credit unions can

only expel a member of their community by a two-thirds vote of all members at a special meeting and only if the behavior they are engaged in is illegal. With notice requirements, the time it takes to hold a special meeting is significant. This legislation would allow credit unions to adopt an expulsion policy to expel members who engage in abusive or illegal behavior, while allowing for an appeal process that would provide due process for the accused member. It would also provide parity with several state-chartered credit unions' model or standard bylaws, which often have a "for cause" provision or a board-adopted policy for expulsion. Credit unions have an obligation to ensure their cooperatives act in the best interests of their members and local communities. This common-sense legislation would put safety first, while still protecting the rights of credit union members.

NAFCU Supports Making Central Liquidity Facility (CLF) Changes Permanent

We would also like to express our support for H.R. 3958, the *Central Liquidity Facility Enhancement Act*, which would make the important changes to the CLF made during the pandemic permanent to better serve credit unions moving forward. We urge the Senate to consider and pass similar legislation. Taking this step now will help ensure that the NCUA has a critical tool to help credit unions the next time financial uncertainty arises.

NAFCU Supports Efforts to Promote De Novo Credit Union Formation

NAFCU supports efforts to promote new credit unions, which has also been a focus for NCUA Vice Chairman Kyle Hauptman. We urge the Committee to consider legislation to improve the chartering process for new credit unions as well as to consider ways to reduce the regulatory burden that discourages new credit union formation. We support legislative efforts such as the bipartisan H.R. 4590, the *Promoting New and Diverse Depository Institutions Act*, which would take important steps to help promote de novo institutions by studying the challenges facing these institutions and having regulators develop a strategic plan to meet those challenges.

Fintech Charters and Supervision

Fintech companies are enjoying unprecedented liberalization of bank chartering rules to either acquire or become banks. Recent developments with both the OCC's new chartering options and the FDIC's approval of deposit insurance for Industrial Loan Company (ILC) applicants also present problems. In each case, a nonbank company can potentially evade regulation under the *Bank Holding Company Act* (BHCA), either because of a statutory loophole unique to ILCs, or because the entity does not accept deposits. Lack of BHCA coverage raises serious concerns regarding the quality and extent of supervision for these specialized or limited purpose banking entities. Chartering additional ILCs or granting new licenses to payments companies could also weaken the safety and soundness of the wider financial system.

In certain cases, specialized, limited purpose bank charters may allow a fintech to operate with national bank privileges but without the same prudential safeguards that apply to traditional banks and credit unions. While some may characterize these chartering schemes as innovative, they are ultimately loopholes which invite unnecessary risk into the financial system and create an uneven playing field. As NAFCU has previously communicated to the Committee, we support efforts to ensure that these new entities have oversight and are properly regulated so that they compete on a level playing field with other regulated institutions.

The housing industry is particularly at risk because of underregulated, non-bank entities. The Financial Stability Oversight Council (FSOC) has identified non-bank mortgage companies as a potential emerging threat to the U.S. economy, specifically with respect to the origination and servicing of mortgage loans held by Fannie Mae, Freddie Mac, and Ginnie Mae.[1] In its 2020 Annual Report, the FSOC encouraged "relevant state and federal regulators to take additional steps to coordinate, collect and share data and information, identify and address potential risks, and strengthen the oversight of non-bank companies involved in the origination and servicing of residential mortgages."[2] As the impacts of the COVID-19 pandemic demonstrated, non-bank seller/servicers are particularly at risk of liquidity shortfalls because they generally rely on short-term funding. A shortfall at a large non-bank servicer could, in turn, impact the GSEs' cash flow and threaten the stability of the entire mortgage market.

Accordingly, it is critical to the safety and soundness of the entire housing finance ecosystem that non-bank servicers, which comprise the most rapidly growing segment of the mortgage market, are held to stringent capital and liquidity requirements. Without such strong standards, the credit union lenders for which they service loans, consumers, and investors in mortgage-backed securities, are all likely to be negatively impacted. As the Committee looks to act in the housing space, we ask that you keep these concerns in mind.

Thank you for the opportunity to share our thoughts on the range of issues before the Committee at this hearing. Should you have any questions or require additional information, please do not hesitate to contact me or Sarah Jacobs, NAFCU's Associate Director of Legislative Affairs, at (571) 289-7550 or sjacobs@nafcu.org.

Sincerely,

Brad Thaler
Vice President of Legislative Affairs

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

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[1] Financial Stability Oversight Council, 2019 Annual Report, https://home.treasury.gov/system/files/261/FSOC2019AnnualReport.pdf

[2] Financial Stability Oversight Council, 2020 Annual Report, https://home.treasury.gov/system/files/261/FSOC2020AnnualReport.pdf