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National Association of Federally-Insured Credit Unions

November 14, 2022

The Honorable Sherrod Brown
Chairman
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Pat Toomey
Ranking Member
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, DC 20510

Re: Tomorrow's Committee Hearing: "Oversight of Financial Regulators: A Strong Banking and Credit Union System for Main Street"

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 Financial Regulators: A Strong Banking and Credit Union System for Main Street." 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.

Credit Unions Want to Do More to Serve Underserved Areas and Banking Deserts

NAFCU is strongly supportive of S. 4879, the Expanding Financial Access for Underserved Communities Act. This legislation, offered by Senator Alex Padilla, takes important steps to help credit unions aid those other financial service providers have left behind. S. 4879 complements the House-passed version of the Expanding Financial Access for Underserved Communities Act, sponsored by House Financial Services Committee Chairwoman Maxine Waters. Credit unions have long been a critical provider of financial services to rural and underserved areas. As large and community banks have been shutting down branches and moving out of these areas, credit unions have been stepping up. It is unfortunate that banking groups continue to actively oppose this effort, attacking efforts by credit unions to do more to help the underserved, rather than focusing on ensuring people who live in banking deserts—areas that banks have abandoned—have access to basic financial services. Many credit unions want to do more to help underserved areas as banks abandon them and passing this provision to help credit unions fill the void would be a commonsense first step. It is important to note that this legislation does not directly grant underserved areas to credit unions, rather it allows them to apply to the NCUA to add these areas should they meet the necessary criteria.

Banks have closed more than 4,000 branches since March 2020, according to an independent National Community Reinvestment Coalition study. This is a pace of over 100 bank branch closures a month. The number of bank branches in rural and underserved areas has declined by

10.8 percent since 2012 while the number of credit union branches in those areas has grown by 2.4 percent. Currently, only credit unions that are chartered as multiple common bond credit unions can add underserved areas. The Expanding Financial Access for Underserved Communities Act will knock down this harmful barrier by allowing all types of federal credit unions to add underserved areas to their field of membership.

The Expanding Financial Access for Underserved Communities Act will also build on the support provided by credit unions to small businesses during the pandemic and exempt business loans made by credit unions in low-income areas from the credit union member business lending (MBL) cap. The MBL cap serves as a disincentive for many credit unions to focus on small business programs, as successful small business efforts could reach the cap and run into limitations. If banks were serious about helping small businesses and underserved areas, they would not have turned so many customers away during the pandemic that then went to credit unions for help. It was credit unions that stepped up to ensure small businesses in their communities were taken care of during the initial days of the pandemic, and their response through the Paycheck Protection Program (PPP) was tremendous. According to a NAFCU survey, 87 percent of NAFCU members reported providing PPP loans to new members and businesses that were turned away by banks and came to their credit union to apply for a PPP loan. Furthermore, according to NAFCU's analysis of the Small Business Administration's PPP data, a full 75 percent of credit union PPP loans went to businesses with fewer than five employees. Many of these are the same businesses that have been underserved by banking institutions and would benefit from the legislation's provision granting relief from the arbitrary MBL cap for loans in underserved areas.

The numbers show that credit unions stand ready to do more to help those who have been left behind by banks. The recent efforts from banking trade associations in opposition to this commonsense reform is incredibly disappointing and stunningly hypocritical. It is the height of cynicism that the banking trade associations are essentially saying that even though their members have left these communities, they do not want credit unions to step in to fill the void as banks pull out. It seems that they would rather underserved communities have no financial institutions than have a credit union serve them. We urge you to help enact the Expanding Financial Access for Underserved Communities Act into law and allow credit unions to do more to help the underserved in banking deserts.

NAFCU Opposes Granting NCUA Oversight Authority Over Third-Party Vendors

NAFCU strongly opposes an amendment in the House-passed NDAA and S. 4698, the Improving Cybersecurity of Credit Unions Act, that would grant the NCUA examination authority over credit union 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 its 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 that processor's business and duplicate an examination. This would seem to be an unnecessary burden on the credit unions that will ultimately bear the cost of overlapping exam work. Additionally, if the NCUA did its own examination of an entity already subject to joint FFIEC exams, the likelihood of finding anything the other regulators did not would 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. If that option is not available for the NCUA due to the decisions of the other FFIEC regulators, Congress should consider compelling the other regulators to share the information with the NCUA. This would seem to be a much more preferable route than raising costs on credit unions and their 133 million members for the creation of a duplicative NCUA program. Supervisory reports for core providers will likely have significant cross-applicability; according to the NCUA, approximately five core processor vendors control approximately 85 percent of credit union data.[1] Use of existing reports for other technology service providers would also address the NCUA's concerns without creating additional costs to credit unions or increasing regulatory burdens on credit unions and small businesses. As such, we urge Congress to oppose granting the NCUA this new authority.

Fintech Charters and Closing the ILC Loophole

NAFCU supports the efforts of the bipartisan Close the ILC Loophole Act, H.R. 5912, and the draft Senate Investing in Local Communities Act. An industrial loan company (ILC) charter can offer certain nonbank parent companies the opportunity to skirt registration as a bank holding company and avoid consolidated supervision by the Federal Reserve.[2] This reduced oversight is further exacerbated by the fact that the FDIC lacks a complete range of statutory authority to

[1] NCUA OIG, Audit of the NCUA's Examination and Oversight Authority Over Credit Union Service Organizations at 3.

[2] Cocheo, Steve, "Fintech Charters Signal a Tectonic Realignment in Banking," July 22, 2020.

fully supervise certain parent companies of ILCs.[3] As a result, the relationship between a nonbank parent and its ILC subsidiary lacks the degree of transparency and accountability intended by the Bank Holding Company Act (BHCA) while at the same time inviting potentially hazardous comingling of banking and commercial activities. In other words, the ILC charter frustrates a core principle of prudential regulation: that a bank's parent company should serve as a transparent source of strength rather than an opaque source of risk.

Central Liquidity Facility Extension

NAFCU supports extending the authorities for the Central Liquidity Facility (CLF) granted under the CARES Act. On November 29, 2021, all three members of the NCUA Board joined together in a bipartisan letter to urge Congress to make permanent, or extend, the enhancements to the CLF made under the CARES Act. These enhancements provide the NCUA with a vital tool to ensure the credit union system has access to a critical contingent liquidity source as it responds to the COVID-19 pandemic and beyond. Extending these changes would provide regulatory certainty for federally-insured credit unions and grant the NCUA additional flexibility to safely manage access to emergency liquidity. We support the amendment in the House-passed NDAA.

Reforming the MBL Cap

Credit unions have the capital to help small businesses thrive, but they are held back by the outdated MBL cap. Under the Federal Credit Union Act, a credit union's aggregate MBL is effectively capped at 12.25 percent of assets. Further modifications or removal of the cap would help provide economic stimulus without costing taxpayers, which is why the issue has bipartisan support in Congress. Furthermore, officials at the U.S. Department of the Treasury and the NCUA have expressed support for lifting the MBL cap.

NAFCU Urges Interagency Coordination on Implementation of Section 1033 of the Dodd-Frank Act

The Consumer Financial Protection Bureau (CFPB) is currently in the rulemaking process to implement Section 1033 of the Dodd-Frank Act governing consumer access to financial records. Section 1033(e) requires the CFPB to consult with the federal banking agencies and the Federal Trade Commission when prescribing any future rule to "take into account conditions under which covered persons do business both in the United States and in other countries."[4] NAFCU has urged both the CFPB and NCUA to assess how implementation of Section 1033 will impact the availability of credit union services, competitive impact on small credit unions, and the security of member transaction data.

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[3] Under Section 10(b)(4) of the FDI Act, the FDIC is permitted to examine any insured depository institution, including an ILC, to examine the affairs of any affiliate, including the parent holding company, "as may be necessary to disclose fully (i) the relationship between the institution and the affiliate; and (ii) to determine the effect of such relationship on the depository institution." 12 U.S.C. § 1820(b)(4). However, this limited grant of authority is no substitute for the full range of examination powers necessary for consolidated supervision.
[4] 12 U.S.C. § 5533(e)(2).

The CFPB has already published an outline of proposals under consideration which does not reference input provided by other federal banking agencies.[5] Shortly before this outline was released, the Director of the CFPB delivered a speech in which he predicted to an audience in Las Vegas that "[O]nce data holding companies must share authorized consumer data with authorized third parties […] this will lead to more shopping by consumers."[6] Such an assertion disregards the healthy competition that exists within financial sector landscape and downplays the serious privacy risks that would follow from any rule that grants third parties—potentially operating outside of the United States—the ability to extract financial data from American consumers at the push of a button. Accordingly, we urge you to ensure that the CFPB conducts the appropriate consultation with the NCUA so that the implementation of Section 1033 not only addresses privacy and security risks, but also preserves the role of smaller community financial institutions. Credit unions are at risk of being displaced by large technology companies that stand to benefit from permissive data sharing rules, and new government regulation that requires credit unions to maintain third party access portals will only drive further consolidation within the financial sector—an outcome that is at odds with the CFPB's desire to promote competition.

NAFCU supports efforts to empower consumers with modern financial tools; however, the CFPB should not seek to compel unvetted, third-party information sharing. Credit unions already provide account information directly to members through statements and other online tools. New rules that might compel the use of third-party APIs for data extraction would tilt the playing field to benefit companies that hope to offset operational, security, and privacy costs. Detailed transaction information held by credit unions represents data earned through trust, and rules that could erode the value of that trust should be carefully considered by all federal banking agencies—not just the CFPB.

The CFPB must ensure that access to consumer financial records is predicated upon a fair distribution of costs, data security and data privacy responsibilities that does not overburden credit unions who already face competitive pressure and reduced bargaining power when interacting with larger technology companies. NAFCU urges your oversight so that the NCUA, CFPB and other federal banking regulators can appropriately coordinate on the implementation of Section 1033.

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[5] *See* CFPB, Outline of Proposals and Alternatives Under Consideration for the Personal Financial Data Rights Rulemaking (October 27, 2022), *available at* https://files.consumerfinance.gov/f/documents/cfpb_data-rights-rulemaking-1033-SBREFA_outline_2022-10.pdf.

[6] Director Chopra's Prepared Remarks at Money 20/20 (October 25, 2022), *available at* https://www.consumerfinance.gov/about-us/newsroom/director-chopra-prepared-remarks-at-money-20-20/ (comparing future CFPB rules to facilitate "open banking" to those that shaped the current telecommunication markets).

In conclusion, we 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 any additional information, please contact me or Jake Plevelich, NAFCU's Associate Director of Legislative Affairs, at jplevelich@nafcu.org.

Sincerely,

Brad Thaler
Vice President of Legislative Affairs

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