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National Association of Federally-Insured Credit Unions

December 9, 2020

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
Washington, DC 20510

The Honorable Charles Schumer
Minority Leader
U.S. Senate
Washington, DC 20510

Re: Conference Report for H.R. 6395, the *William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021*

Dear Leader McConnell and Leader Schumer:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) to share with you our support for the Conference Agreement for H.R. 6395, the *William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021*, (FY 2021 NDAA) ahead of floor consideration. As you are aware, NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 122 million consumers with personal and small business financial service products. The FY 2021 NDAA contains several important provisions for credit unions. We thank the House for passing this legislation in a commanding vote, and we urge you to also support and pass the legislation.

Protecting Defense Credit Union Leases

We thank the Conference Committee for recognizing the important role that defense credit unions play for our men and women in the military in providing traditional financial services and protecting our troops from predatory lenders by protecting credit union military base leases in this legislation. As you know, through a years-long series of discussions with the Department of Defense (DoD), months of debate and several hearings before Congress, an amendment to the *Federal Credit Union Act* (FCU Act) was passed as part of the *Financial Services Regulatory Relief Act of 2006* (P.L. 109-351) to clarify that DoD has the discretionary authority to lease space on military bases at a nominal rate to credit unions provided that they meet certain statutory and regulatory requirements regarding the provision of financial services in the on-base facility (12 U.S.C. § 1770). It is important to note that while DoD has chosen to afford space on military bases at a nominal rate to credit unions, they are not required to do so. DoD, like many others, recognizes the value that credit unions bring to our men and women in uniform, in good times and bad. For example, during the partial government shutdown last year, many credit unions offered programs to assist those impacted by a lack of a paycheck, while other financial institutions did little or nothing.

The Senate's version of the FY 2021 NDAA, S.4049, contained a provision that would require the DoD to treat large mega-banks, such as Wells Fargo, the same as a military installation's local not-for-profit defense credit union when it comes to rent on military bases. The House did not include

a similar provision, and we thank the Senate for receding on this provision in Conference. While we recognize the important role both credit unions and banks can play for our men and women in the military in the provision of traditional financial services, the fact remains that banks and credit unions are fundamentally different. For-profit banks ultimately focus on benefitting shareholders while credit unions focus on serving their member-owners.

It is important to point out that although bankers claim that they are required to pay rent on military bases at a fair market value cost, the reality is that banks also already have an avenue to pursue nominal cost leases via 10 U.S.C. § 2667. The *Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001* (P.L. 106-398) gave DoD the authority to accept “in-kind consideration” for leases on military property, including “provision of such other services relating to activities that will occur on the leased property that the Secretary concerned considers appropriate.” If military banks were to work with DoD, in-kind consideration could be accepted with respect to a bank lease under existing law, resulting in a nominal payment lease.

BSA/AML/Beneficial Ownership Reform

We thank the Conference Committee for including legislation in the Conference Agreement to make critical improvements to our *Bank Secrecy Act* (BSA)/anti-money laundering (AML) regime and require companies to disclose their true beneficial ownership information to the Financial Crimes Enforcement Network (FinCEN) for the purposes of a newly created nonpublic database of beneficial ownership information. Credit unions strongly support efforts to combat criminal activity in the financial system. NAFCU has consistently recognized the importance of FinCEN, BSA, and AML/countering the financing of terrorism (CFT) requirements in assisting in the prevention of tax evasion, money laundering and terrorist financing. Our members have a good working relationship with FinCEN, and they consistently inform us that the publication of periodic BSA/AML guidance is very helpful. However, BSA/AML requirements remain a burden to implement, and the system is in need of improvements and reform.

As you know, the House-passed FY 2021 NDAA contained bipartisan beneficial ownership and BSA/AML reform legislation – the *Corporate Transparency Act* and the *COUNTER Act* – that were also considered and passed by the House in October 2019. Although the Senate-passed FY 2021 NDAA did not contain an equivalent provision, Senate Banking Committee Chairman Mike Crapo (R-ID) and Ranking Member Sherrod Brown (D-OH) did put forth a bipartisan proposal similar in scope – the *Anti-Money Laundering Act of 2020*.

The language in Division F of the Conference Agreement closely resembles the *Anti-Money Laundering Act of 2020*. This legislation would help community financial institutions such as credit unions more effectively target their resources in order to make our financial system safer.

First, the legislation would take the crucial step of requiring companies to disclose their true beneficial ownership information to FinCEN for the purposes of a newly created nonpublic database of beneficial ownership information. Financial institutions would be able to request confirmation of beneficial ownership information for purposes of compliance with the Customer

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Due Diligence (CDD) rule. As you know, the CDD rule has been highly burdensome for small financial institutions to implement, and the creation of this database would be enormously helpful for compliance purposes. Even more importantly, criminal actors frequently conceal their identities through anonymous shell companies, and as one of the few developed countries to not maintain a registry of beneficial ownership information, the United States has become a haven for these types of corporate entities. It is critical that you act now to establish a beneficial ownership database so we can address this illicit activity.

Secondly, the legislation would make critical modernizations and improvements to our BSA/AML system. The legislation takes many steps that NAFCU supports, including: establishing examination and supervisory consistency by providing regulators with factors that must be taken into account, thus allowing credit unions to effectively target their resources toward higher-risk customers and activities; enhancing the “FinCEN Exchange” to facilitate public/private information sharing on BSA issues; establishing various programs to increase knowledge and coordination amongst the Federal regulators on AML/CFT matters; directing FinCEN and other Federal regulators to establish a streamlined, automated Suspicious Activity Report (SAR) filing process for noncomplex reports; and improving the feedback loop between financial institutions and regulators, including requiring law enforcement to periodically report on SAR trends. Overall, the legislation is an important step to improve the BSA/AML regulatory compliance regime for law enforcement and community institutions such as credit unions, and we thank the Conference Committee for including it in the FY 2021 NDAA.

We thank you for your leadership in ensuring passage of the FY 2021 NDAA and appreciate the opportunity to share our thoughts on this important legislation. Should you have any questions or require any additional information, please contact me or Sarah Jacobs, NAFCU’s Associate Director of Legislative Affairs, at (571) 289-7550.

Sincerely,



Brad Thaler
Vice President of Legislative Affairs

cc: Members of the U.S. Senate