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National Association of Federally-Insured Credit Unions

B. Dan Berger
President & Chief Executive Officer

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The Honorable Steven T. Mnuchin
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

RE: NAFCU's Regulatory Priorities

Dear Secretary Mnuchin:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I would like to share with you the top priorities of our nation's credit unions in light of the recent election. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 122 million consumers with personal and small business financial service products. These priorities outline areas that are best suited for regulatory relief and expanded flexibilities to help assist credit unions as they continue to manage the impacts of the COVID-19 pandemic going into the new year. NAFCU urges the U.S. Department of the Treasury (Treasury) along with the Financial Crimes Enforcement Network (FinCEN) and the Internal Revenue Service (IRS) to evaluate the below issues and adopt the requested policy modifications to better equip our nations credit unions to emerge healthy and strong from the pandemic and resultant economic downturn. We hope that you will work with us to address these concerns.

Executive Summary

1. *Additional COVID-19 Relief*. Treasury should continue to work with Congress to reach an agreement on another stimulus package that provides more relief for credit unions and their members, including under the Paycheck Protection Program (PPP).
2. *Bank Secrecy Act (BSA)/Anti-Money Laundering (AML) Reform*. FinCEN should pursue regulatory modernization of BSA/AML compliance requirements and support legislative efforts to reform the BSA/AML framework.
3. *Excise Tax on Executive Compensation*. The IRS should grandfather certain nonqualified deferred compensation plans under provisions of the *Tax Cuts and Jobs Act* (TCJA) and exclude fringe benefits from excise tax requirements.

Treasury Regulatory Priorities

Additional COVID-19 Relief

NAFCU appreciates the Treasury's ongoing efforts to coordinate with lawmakers and regulators to provide relief to credit unions and their members impacted by the COVID-19 pandemic. As the nation awaits further negotiations on another stimulus package, NAFCU remains engaged with both the Senate and the House of Representatives regarding extensions and modifications to certain provisions of the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act) and potential areas for additional regulatory relief for credit unions grappling with the economic impacts of the pandemic.

One critical area for additional relief is expanded assistance for America's small businesses through the Small Business Administration's (SBA) PPP loans. From the start of the program, through the expiration of PPP funding in August 2020, credit unions stepped up to the plate to offer small businesses access to PPP loans to help them survive this economic downturn. In fact, credit unions served the small businesses who needed assistance the most. According to SBA's PPP data, 70 percent of credit union PPP loans extended were to businesses with less than five employees. But many small businesses still need access to small dollar loans as the pandemic continues and the speed of economic recovery remains uncertain. To that end, NAFCU supports a second round of PPP loans to the hardest hit small businesses, including through the "Second Draw" PPP loans proposed by the *Continuing Paycheck Protection Program Act*.

In addition, NAFCU encourages the Treasury to continue to coordinate with the SBA to further improve the forgiveness process, including the forgiveness application for smaller PPP loans. Although the new 3508EZ form did provide some relief for those borrowers with smaller PPP loans, it does not go far enough to ease the burden of the forgiveness process. NAFCU's members continue to report that their small business members are concerned about the time and cost of correctly completing the forgiveness application and those businesses must seek outside advisors to assist with the completion of the form. The resources expended on completing the forgiveness application are better spent fully reopening their businesses and paying employees; therefore, we urge the Treasury to coordinate with the SBA to provide further simplification of the application process.

Although NAFCU supports automatic forgiveness for all loans under $150,000, a simplified forgiveness process for such loans would also help many small businesses. NAFCU appreciates the new 3508S form, which provides a simplified forgiveness application for loans under $50,000, but urges the Treasury and SBA to consider relief at a higher threshold. NAFCU supports a simplified loan forgiveness process for PPP loans under $150,000, as proposed in S. 4117, the *Paycheck Protection Small Business Forgiveness Act*. This bipartisan bill would create a one-page forgiveness form for loans under $150,000. Such loans account for 87 percent of PPP recipients but only account for 28 percent of the funds disbursed by the SBA, so a simplified forgiveness process would offer critical relief for small businesses across the nation. This threshold for simplified forgiveness would also cover most credit unions loans, which averaged around $50,000.

The Treasury should support automatic forgiveness for loans under $150,000 or, at the least, a simplified forgiveness process for loans under $150,000 as proposed in S. 4117.

BSA/AML Reform

NAFCU supports a strong regulatory system to combat financial crimes, including tax evasion, money laundering, and terrorist financing. FinCEN and the BSA and AML/countering the financing of terrorism (CFT) requirements are essential elements of the regulatory system. However, the BSA/AML framework is in need of modernization and NAFCU asks the Treasury to encourage continued transparency from FinCEN regarding its efforts to update BSA/AML requirements.

NAFCU supports modernization and reform to the existing information-sharing programs and reporting mechanisms to increase the overall effectiveness of AML efforts. Robust information-sharing between credit unions, regulators, and law enforcement through partnerships and existing mechanisms is a key component of an effective BSA/AML program. The ability to look at more internal and external information for multiple purposes, including fraud detection, AML, and sanctions, and share that information across both the public and private sector will enable credit unions to better carry out the intent of the BSA. Currently, the voluntary 314(b) information-sharing program limits credit unions to sharing information about fraud in situations of money laundering or terrorist financing. Fraudulent activity has increased exponentially in recent years and can often evolve or include a broader money laundering scheme. NAFCU has previously urged FinCEN to expand the scope of the information-sharing programs to include fraud to reduce losses suffered and increase the chances of identifying suspects.

In addition, credit unions remain committed to ensuring law enforcement and regulatory agencies have useful information to assist with carrying out the intent of the BSA with required reporting. Reforming the required BSA reports could have a significant impact of reducing regulatory burdens on credit unions, while ensuring that valuable information is provided. NAFCU recommends a modified suspicious activity report (SAR) form for continuous filings and updating the current form to remove redundant fields and allow for more auto-fill fields.

NAFCU also encourages the Treasury to support bipartisan reform efforts such as the *Anti-Money Laundering Act of 2020*, as an amendment to S. 4049, the *National Defense Authorization Act for Fiscal Year 2021*, to improve corporate transparency and modernize the BSA/AML system This bill represents a compromise based on S. 2563, the *Improving Laundering Laws and Increasing Comprehensive Information Tracking of Criminal Activity in Shell Holdings Act* (ILLICIT CASH Act). More specifically, NAFCU also supports legislative efforts to increase the suspicious activity report (SAR) and currency transaction report (CTR) thresholds. NAFCU supports H.R. 2513, the *Corporate Transparency Act*, which was amended to include the *COUNTER Act* and indexes the CTR threshold to inflation. The Treasury and FinCEN should support these legislative efforts to help modernize the BSA/AML system to better guard against criminal activity in the financial system.

Excise Tax on Executive Compensation

NAFCU urges the Treasury and the IRS to evaluate all available authority to grandfather certain employee remuneration contracts, including nonqualified deferred compensation plans under 26 U.S.C. § 457(f), from the excise tax required by the TCJA. The TCJA established a 21 percent excise tax on such nonqualified deferred compensation plans over $1 million; however, for-profit corporations with nonqualified deferred compensation plans entered into on or before November 2, 2017 were exempt from this excise tax. Credit unions as not-for-profit, member-owned financial institutions provide many benefits to their communities, including underserved areas, and this excise tax could make it more difficult for credit unions to continue serving these communities. The excise tax reduces credit unions' ability to attract and retain talented executives who can help to ensure the safety and soundness and growth of the institution. The IRS should reinterpret the TCJA to establish such parity for credit unions and preserve essential resources for communities across America as they grapple with the economic impacts of the COVID-19 pandemic.

The TCJA also added section 4960 to the Internal Revenue Code (IRC), which required certain tax-exempt organizations to pay an excise tax on excess renumeration. In a letter dated August 7, 2020, NAFCU requested that the IRS adopt a definition of remuneration that does not include taxable fringe benefits over and above the amount that is excludable from gross income. Instead, this definition of remuneration should only include regular employee wages because fringe benefits are not the type of excess remuneration the TCJA intended to tax. NAFCU reiterates this request now and asks that the Treasury coordinate with the IRS to adopt this definition.

Conclusion

NAFCU would like to thank the Treasury for its continued commitment to providing important relief for our nation's credit unions and their members. Over the remaining weeks in 2020, NAFCU recommends that the Treasury address the critical issues outlined above, including additional COVID-19 relief through expanded PPP loan funding and a simplified forgiveness process, BSA/AML reform, and relief from IRS rules related to the excise tax on executive compensation under the TCJA. Thank you for your consideration and we look forward to working with you to address these priorities. If we can answer any questions or provide you with additional information on any of these issues, please do not hesitate to contact me or Ann Kossachev, NAFCU's Director of Regulatory Affairs, at 703-842-2212 or akossachev@nafcu.org.

Sincerely,

B. Dan Berger
President and CEO