National Association of Federal Credit Unions
3138 10th Street North • Arlington, Virginia • 22201-2149
(703) 522-4770 • (800) 336-4644 • Fax (703) 522-2734

Fred R. Becker, Jr.
President and CEO

January 25, 2011

The Honorable Spencer Bachus
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Barney Frank
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Bachus and Ranking Member Frank:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade organization exclusively representing the interests of our nation's federal credit unions, I am writing to you regarding a number of regulatory reform proposals that NAFCU would like to see included in any legislation to make modifications to the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. Listed below are several corrections and clarifications of the bill as it applies to credit unions, and ask that they be included in any regulatory reform corrections legislation the Committee takes up during this Congress. We may have additional recommendations as regulatory reform modification discussions continue.

- Transition Time: the requirements imposed by Dodd-Frank create a number of new compliance burdens, and it will take credit unions some additional time to resolve arising issues. A slightly longer period for implementation—up to 24 months for some areas—would help to alleviate some of these burdens and give credit unions more time to comply with new regulations.

- Interchange Provisions: the bill's hastily included requirement that the Federal Reserve issue a new rule capping debit card interchange fees will have a significant impact on credit unions, which may be forced to cut back on their card programs as a result. NAFCU asks that the Committee work to repeal this harmful interchange language, which will have a damaging impact on credit unions and other small financial institutions.

- Inflation Adjustment: an important omission in Dodd-Frank is the indexing of all monetary thresholds in the bill annually for inflation. This is important to keep the intent of the legislation intact over time. $10 billion in assets today will not be the equivalent of $10 billion in assets next year, and NAFCU is concerned that more and more institutions will find themselves crossing this arbitrary line and becoming subject to new and unintended requirements.

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- Preemption Clarification: one area that remains ambiguous in its application to credit unions is that of the Bureau of Consumer Financial Protection (BCFP)'s power to preempt consumer protection rules issued by the NCUA. The bill is silent as to credit unions, though Senator Carper, the author of many of the adopted preemption provisions, stated on the Senate floor that they were not intended to apply to credit unions. We ask that the Committee add this clarification to the bill's language, to avoid any ambiguities in the future.

- Unified Mortgage Loan Disclosure: although Dodd-Frank calls for a joint HUD-RESPA rule concerning mortgage loan disclosures, the bill provides an important exception—it leaves the BCFP with the final say on whether a new rule is needed. A combined disclosure rule is critical to avoiding some of the confusion and overlap that currently exists during the mortgage loan transaction process, lessening the compliance burden on financial institutions and easing procedures for borrowers.

- Definition of "Remittance Transfer": NAFCU also remains concerned that the overly broad definition of a "remittance transfer" in the bill imposes new disclosure requirements on all international electronic transfer of funds services, and not just transmissions of money from immigrants in the U.S. to their families abroad—which are in fact conventional remittances. The new regulatory and disclosure requirements would impose significant compliance obstacles for non-remittance services, and we ask that the definition be narrowed accordingly.

- BCFP Document Access: while Dodd-Frank excludes financial institutions with $10 billion or less in assets from the examination authority of the BCFP, the new agency is provided with unlimited access to financial reports concerning covered persons issued by other regulators. Since the reports are drafted by federal agencies as part of their examination procedures, access by the BCFP to the reports essentially amounts to an examination in itself, even for those institutions with $10 billion or less. NAFCU does not believe that this kind of overreach is the result Congress was seeking to achieve, and asks that this broad language be narrowed appropriately.

- Appraiser Independence: Section 1472 of the Act imposes mandatory reporting requirements on credit unions and other lenders who believe an appraiser is behaving unethically or violating applicable codes and laws, with heavy monetary penalties for failure to comply. These provisions would impose a significant burden on each credit union to essentially serve as a watchdog for appraisers violating their own professional practices, and should therefore be optional. If reporting continues to be compulsory, NAFCU asks that Congress amend the severe penalties of up to $10,000 or $20,000 per day. Such high amounts are simply unreasonable in this situation.

In addition, there are a number of issues arising from previous legislation that the Committee has not yet had the chance to address and resolve as needed. We ask that the Committee take advantage of this opportunity to attend to the following matters of high importance for credit unions.

- E-SIGN Act Requirements: passed in 2000, the E-SIGN Act requires financial institutions to receive consumer consent *electronically* before e-statements can be selected. Credit union members cannot accept their members' consent to receive e-statements over the phone or in person, but must instead send them back to their computers to confirm electronically, inevitably

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- Member Business Loans: as you are probably aware, credit unions have a 12.25% asset cap on their business lending, with loans of $50,000 or less exempt from this cap. Passed in 1998, this arbitrary threshold is severely outdated, and has not increased with inflation and economic fluctuations. At the very least, we ask that this *de minimis* exclusion be increased to exempt loans under $100,000, to allow credit unions to continue to lend to small business owners in dire need of credit during this tough economic time.

- Risk-Based Capital: We ask that Congress amend current law to make all credit unions subject to risk-based capital standards, as credit unions need this flexibility to determine their own risk and ability to lend. NAFCU supports amending the Federal Credit Union Act to permit the inclusion of certain uninsured capital instruments in a credit union's net worth. NAFCU strongly believes in the mutual model for credit unions and believes that all capital, including alternative capital, should come from membership, or in very limited circumstances, NCUA. This change will enable credit unions to keep their mutuality, yet better manage their net worth levels under varying economic conditions.

- SAFE Act Definition of "Loan Originator": the S.A.F.E. Mortgage Licensing Act of 2008 required financial institutions to register any "loan originator." While the intent was to record underwriters, regulators have interpreted the definition very broadly to include any employee accepting a loan application, and even call center staff. NAFCU asks that Congress narrow the meaning of what it means to "take" an application and to "offer" or "negotiate" terms, which would help prevent credit unions from going through a burdensome process to unnecessarily register individuals not involved in underwriting loans.

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Thank you for your consideration and attention to these important matters. If we can answer any questions or provide you with further information on this matter, please do not hesitate to contact myself or NAFCU's Director of Legislative Affairs, Brad Thaler, at 703-522-4770.

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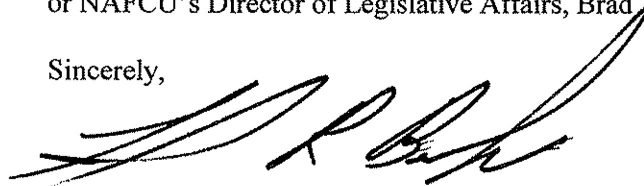

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