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NAFCU
National Association of Federal Credit Unions | www.nafcu.org

September 8, 2014

The Honorable Tim Johnson
Chairman
Senate Committee on Banking,
Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

The Honorable Michael Crapo
Ranking Member
Senate Committee on Banking,
Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

Re: The Importance of Regulatory Relief for our Nation's Credit Unions

Dear Chairman Johnson and Ranking Member Crapo:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association exclusively representing the interests of our nation's federal credit unions, I write in advance of tomorrow's hearing, "Wall Street Reform: Assessing and Enhancing the Financial Regulatory System." NAFCU appreciates the Committee holding this important oversight hearing on the aftermath of Wall Street reform.

In the wake of financial reform, credit unions have seen an increasingly difficult and challenging regulatory environment. This growing demand on credit unions is demonstrated by a 2011 NAFCU survey of our membership that found that nearly 97% of respondents were spending more time on regulatory compliance issues than they did in 2009. A 2012 NAFCU survey of our membership found that 94% of respondents had seen their compliance burdens increase since the passage of the *Dodd-Frank Act* in 2010. Furthermore, a March 2013 survey of NAFCU members found that nearly 27% had increased their full-time equivalents (FTEs) for compliance personnel in 2013, as compared to 2012. That same survey found that over 70% of respondents have had non-compliance staff members take on compliance-related duties due to the increasing regulatory burden. This highlights the fact that many non-compliance staff are being forced to take time away from serving members to spend time on compliance issues.

While it was important to go after the bad actors that caused the financial crisis, many of the good actors, such as credit unions, have been caught up in the tidal wave of new regulations post-crisis. It is with this in mind that NAFCU continues to call on Congress to enact commonsense regulatory relief that will enable credit unions to better serve their 98 million member-owners. We urge the Committee to act on the ideas found in NAFCU's five-point plan on regulatory relief shared with you in February of 2013 (attached). We have also enclosed a copy of NAFCU's "Dirty Dozen" regulatory requirements that could be eliminated or amended to the benefit of credit unions and credit union members without Congressional action.

We also urge the Committee to encourage the regulators, to the extent possible, to find new and creative ways within their current authority to lessen the burden of new regulations on credit unions. Examples of steps that the CFPB could take include using its authority to exempt small entities such as credit unions from rulemakings and also providing clear and concise written guidance when ambiguity arises on new CFPB rules.

In addition, as part of the Financial Stability Oversight Council, the CFPB, the National Credit Union Administration (NCUA) and various other regulatory agencies have a statutory obligation to coordinate various rulemaking efforts. This type of coordination is essential to reducing regulatory relief for credit unions as new regulations being layered on top of outdated and existing regulations is commonplace and often goes unaddressed. We urge the Committee to continue to press all regulators in this regard.

Thank you for holding this important hearing. If you have any questions or would like further information about any of these issues, please do not hesitate to contact myself or NAFCU's Director of Legislative Affairs, Jillian Pevo, by telephone at (703) 842-2286 or by e-mail at jpevo@nafcu.org.

Sincerely,

Brad Thaler
Vice President of Legislative Affairs

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

Attachments:

NAFCU's "Five Point Plan for Regulatory Relief" released in February 2013

NAFCU's "Dirty Dozen" – Twelve Regulations to Eliminate or Amend

Learn How NAFCU's Five-Point Plan Will Bring Regulatory Relief to Credit Unions

In February 2013, NAFCU was the first trade association to call on this Congress to provide comprehensive broad-based regulatory relief for credit unions. As part of this effort, NAFCU sent Congress a five-point plan for regulatory relief that will significantly enhance credit unions' ability to create jobs, help the middle class, and boost our nation's struggling economy. The five-point plan is built on a solid framework of recommendations that provide regulatory relief through the following:

1. Administrative Improvements for the Powers of the NCUA

- Allow a federal credit union to petition NCUA for a waiver of a federal rule in favor of a state rule.
- Provide NCUA the authority to delay implementation of CFPB rules that affect credit unions and to tailor those rules for credit unions' unique structure.
- Require a cost/benefit analysis of all rules that includes a three-year look back and reevaluation of rules that cost 20 percent or more than their original cost estimate.
- Enact new examination fairness provisions to help ensure timeliness, clear guidance and an independent appeal process free of examiner retaliation.
- Improve the Central Liquidity Facility by removing the subscription requirement for membership and permanently removing the borrowing cap.

2. Capital Reforms for Credit Unions

- Direct NCUA and industry representatives to conduct a study on prompt corrective action and recommend changes.
- Modernize capital standards by directing the NCUA Board to design a risk-based capital regime for credit unions that takes into account material risks and allows the NCUA Board to authorize supplemental capital.
- Establish special capital requirements for newly chartered federal credit unions that recognize the unique nature and challenges of starting a new credit union.

3. Structural Improvements for Credit Unions

- Direct NCUA, with industry input, to conduct a study of outdated corporate governance provisions in the Federal Credit Union Act and make recommended changes to Congress.
- Improve the process for expanding a federal credit union's field of membership by allowing voluntary mergers among multiple common bond credit unions, easing the community charter conversion process and making it easier to include those designated as "underserved" within a credit union's field of membership.

4. Operational Improvements for Credit Unions

- Raise the arbitrary cap on member business loans to 27.5% or raise the exemption on MBL loans from $50,000 to $250,000, adjusted for inflation, and exempt loans made to non-profit religious organizations, businesses with fewer than 20 employees and businesses in "underserved areas."
- Remove requirements to mail redundant and unnecessary privacy notices on an annual basis, if the policy has not changed and new sharing has not begun since the last distribution of the notice.
- Allow credit unions greater authority and flexibility in how they invest.
- Provide NCUA the authority to establish longer maturities for certain credit union loans and greater flexibility in responding to market conditions.
- Provide federal share insurance coverage for Interest on Lawyers Trust Accounts (IOLTAs).

5. 21st Century Data Security Standards

- Establish national standards for safekeeping of all financial information.
- Establish enforcement standards for data security that prohibit merchants from retaining financial data, and require merchants to disclose their data security policies to customers.
- Hold merchants accountable for the costs of a data breach, especially when it was due to their own negligence; shift the burden of proof in data breach cases to the party that incurred a breach and require timely disclosures in the event of a breach.

For more information, visit **www.nafcu.org/regrelief.**

NAFCU's "Dirty Dozen" - Twelve Regulations to Eliminate or Amend

1. **Expand credit union investment authority** to include permissible investments in derivatives, securitization and mortgage servicing rights. NAFCU strongly pushed for the expansion of credit unions' investment authority to include the ability to engage in limited derivatives activities. NAFCU will continue to seek this authority for qualified credit unions. In addition, NAFCU will push for the authority to securitize loans and expanded ability to invest in mortgage servicing rights.

2. **Seek updates and modernization of the NCUA's fixed assets rule.** In particular, the NCUA should: (1) increase the current 5 percent aggregate limit; (2) re-define what constitutes "fixed assets"; and, (3) improve the process of obtaining a waiver.

3. **Improve the process for credit unions seeking changes to their field of membership.** Improvements should include: (1) enabling credit unions to strengthen their associational membership charter; (2) streamlining the process for converting from one charter type to another; (3) remove or greatly increase the current population limits for serving members in a metropolitan area (1 million) and contiguous political jurisdictions (500,000); and, (4) making it easier for all credit unions to add "underserved" areas within their field of membership.

4. **Increase the number of transfers allowed to be made per month from savings accounts.** The restriction on "convenience transfers" under Regulation D presents an ongoing concern for NAFCU and its members. Members are often unable to understand and remember the arbitrary limits on the number and types of transfers the regulations permit them to make from their savings account. Members expect to have the ability to transfer their funds with ease to and from particular accounts, and the regulation's six-transfer limitation from savings accounts creates an undue burden for both members and credit unions. This six-transfer limitation should be updated and increased to at least nine transfers per month, while still making a distinction between savings and transaction accounts.

5. **Seek added flexibility for credit unions that offer member business loans.** These improvements could include: (1) securing credit union-friendly changes to the waiver process; (2) increasing the general minimum loan-to-value ratio from 80% to 85%; and, (3) securing removal of the 5 year relationship requirement.

6. **Update the requirement to disclose account numbers to protect the privacy of members.** Credit unions are currently required to list a member's full account number on every periodic statement sent to the member for their share accounts pursuant to Regulation E. These requirements need to be updated to allow the credit union to truncate account numbers on periodic statements in order to protect the privacy of the member and to reduce the risks of fraud and identity theft.

7. **Update advertising requirements for loan products and share accounts.** The regulatory requirements for advertisement of credit unions' loan products and share accounts have not kept pace with technological changes in the current market place. The requirements of Regulation Z and Truth in Savings should be updated to reflect these changes and advances in practical advertisements and the disbursement of information, while maintaining the integrity and accuracy of the information that the member truly needs to know from the advertisement.

8. **Modernize NCUA advertising requirements** to keep up with technological changes and an increasingly mobile membership. Update NCUA regulations to clarify that the official sign is not required to be displayed on (1) mobile applications, (2) social media, and (3) virtual tellers.

9. **Seek improvements to the Central Liquidity Facility** by reducing the amount of time that it takes for a credit union to secure access to liquidity. In addition, work with the NCUA to secure changes the Central Liquidity Facility by removing the subscription requirement for membership and permanently removing the borrowing cap.

10. **Obtain flexibility for federal credit unions to determine their choice of law.** Federal credit unions should be allowed the opportunity to choose the jurisdiction under which they operate without surrendering their federal charter. To this end, NAFCU will work with the NCUA to establish a waiver process under which a federal credit union, taking into account safety and soundness considerations, would choose the state law under which it wants one or more of its operations.

11. **Update, simplify and make improvements to regulations governing check processing and funds availability.** These enhancements should include: changing outdated references (i.e., references to non-local checks); changes that are required by statute and are already effective and incorrectly stated in the regulation; and changes that enable credit unions to address fraud.

12. **Eliminate redundant NCUA requirements to provide copies of appraisals upon request.** Credit unions are required to provide copies of appraisals under the CFPB's final mortgage rules upon receipt of an application for certain mortgages. The NCUA's requirements to provide a copy upon request should be amended to remove this duplicative requirement.