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

March 23, 2015

The Honorable Bob Goodlatte
Chairman
Judiciary Committee
United States House of Representatives
Washington, D.C. 20515

The Honorable John Conyers
Ranking Member
Judiciary Committee
United States House of Representatives
Washington, D.C. 20515

Re: The Need for Regulatory Relief for Our Nation's Credit Unions

Dear Chairman Goodlatte and Ranking Member Conyers:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association exclusively representing the interests of our nation's federally chartered credit unions, I write today in conjunction with tomorrow's markup of H.R. 1155, the *Searching for and Cutting Regulations that are Unnecessarily Burdensome (SCRUB) Act of 2015*. Credit unions and their 100 million members strongly support efforts such as the SCRUB Act to mitigate the regulatory burden imposed by federal agencies, particularly those with direct jurisdiction over credit unions including the National Credit Union Administration (NCUA) and Consumer Financial Protection Bureau (CFPB).

As you know, this important piece of legislation would establish a commission to review federal regulations and identify those that should be repealed or amended to reduce unnecessary regulatory burdens. In addition, the bill would require agencies to offset the cost of new regulations by repealing or amending regulations identified by the commission. NAFCU supports the intention of regulatory relief behind this legislation and believes it would be a good first step in addressing the overly burdensome regulatory environment credit unions face.

The magnitude of the regulatory burden facing credit unions is immense and continuously growing. Many credit unions are struggling to keep pace with the compliance burden placed on them by multiple regulators, which is evident in the reduction of credit unions. The total number of credit unions has declined by 23% (more than 1,800 institutions since 2007). Credit unions are often forced to merge or simply shut their doors as a result of an inability to cope with regulatory burdens. While credit unions were not the cause of the financial crisis, they are still subject to the CFPB and many regulations intended for those that did. Consequently, finding ways to cut-down on burdensome and unnecessary regulatory compliance costs is a chief priority of our members.

As outlined in the attached letter sent to Congress on March 9, 2015, NAFCU's new five point plan for regulatory relief includes several important provisions aimed at ensuring credit unions

are not subject to over burdensome, outdated, or duplicative regulation. As the Judiciary Committee continues to look at ways to reduce regulatory burden moving forward, we ask that you keep in mind the need for regulatory relief for our nation's credit unions.

Thank you for your leadership in bringing the SCRUB Act before the committee, and the opportunity to comment on the overwhelming amount of regulatory burden credit unions face. We look forward to working with the committee to address regulatory relief and stand ready to be a resource should the committee have questions about or need assistance in identifying the regulatory burdens facing small financial institutions such as credit unions.

If my colleagues or I can be of assistance to you, or if you have any questions regarding this issue, please feel free to contact myself, or NAFCU's Director of Legislative Affairs, Jillian Pevo at (703) 842-2836.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Thaler', with a long horizontal line extending to the right.

Brad Thaler
Vice President of Legislative Affairs

cc: Members of the House Judiciary Committee

Attachment



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March 9, 2015

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Harry Reid
Minority Leader
United States Senate
Washington, D.C. 20510

The Honorable John Boehner
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Re: NAFCU's Five-Point Plan for Credit Union Regulatory Relief

Dear Leader McConnell, Leader Reid, Speaker Boehner and Leader Pelosi:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association exclusively representing our nation's federal credit unions, I write today to share some of the top legislative priorities of our nation's credit unions that we have included in NAFCU's new Five-Point Plan for Credit Union Regulatory Relief. I have included a copy of the plan with this letter.

Credit unions are struggling under an ever increasing regulatory burden—one that is often under-represented due to inaccurate time and cost of compliance estimates made by regulators when new requirements are issued. Member-owned not-for-profit credit unions provide nearly 100 million Americans with personal and small business financial service products as the economy continues to recover from the financial crisis. Credit unions are working to provide loans and help their members, but are often hampered by this regulatory burden. As you continue your legislative work in this Congress, we hope that you will tackle these issues that will allow credit unions to better serve their members.

Capital Reforms for Credit Unions

NAFCU believes that capital standards for credit unions should be modernized to reflect the realities of the 21st century financial marketplace and that this requires legislative action. We remain concerned with and opposed to the National Credit Union Administration's new risk-based capital proposal. We believe that this proposal is a costly proposal for credit unions, both in the direct costs they will incur to comply and in the impact it will have on their capital cushions. NCUA has provided insufficient evidence that there is a current need for such costly proposal or that the proposal would have helped credit unions during the financial downturn. We also believe that questions remain about the legal authority of NCUA to issue the proposal that they did.

Ultimately, we believe a true risk-based capital system for credit unions that more accurately reflects a credit union's risk profile involves changes to the *Federal Credit Union Act* and should be authorized by Congress. We also believe that NCUA should be given the authority to allow

supplemental capital accounts for credit unions that meet certain standards and are pleased that bipartisan legislation has been introduced in the House by Representatives Pete King and Brad Sherman in the form of H.R. 989.

Field of Membership Improvements for Credit Unions

NAFCU believes there should be improvements to the *Federal Credit Union Act* to help enhance the federal credit union charter. These include updating the Act to allow voluntary mergers involving multiple common bond credit unions and to allow credit unions that convert to community charters to retain their current select employee groups (SEGs). We also believe that all credit unions, regardless of charter type, should be allowed to add underserved areas to their field of membership. Finally, NCUA should have authority to grant parity to a federal credit union on a broader state rule, if such a shift would allow them to better serve their members and continue to protect the National Credit Union Share Insurance Fund.

Reducing CFPB Burdens on Credit Unions

Credit unions did not cause the financial crisis, but have been victims in the new tide of regulations aimed at those institutions who did, with over 1,000 institutions disappearing since the passage of the *Dodd-Frank Act*, primarily due to the new regulatory burdens. NAFCU believes that, given their unique nature, all credit unions should be exempt from the Consumer Financial Protection Bureau's rulemaking and examination authority, with NCUA once again given authority to write all rules for credit unions, tailoring new proposals to meet the special nature of the credit union industry.

While credit unions are subject to the CFPB, we believe that NCUA should have the authority to delay the implementation of a CFPB rule that applies to credit unions, if complying with the proposed timeline would create an undue hardship. Furthermore, given the unique nature of credit unions, NCUA should have authority to modify a CFPB rule for credit unions, provided that the objectives of the CFPB rule continue to be met. Finally, we believe that NCUA and the CFPB should be required to conduct a look-back cost-benefit analysis on all new rules after three years. The regulators should be required to revisit and modify any rules for which the cost or time of complying was underestimated by 20% or more from the original estimate at the time of issuance.

Operational Improvements for Credit Unions

Credit unions stand willing and ready to assist in our nation's economic recovery. Our industry's ability to do so, however, is severely inhibited by antiquated legislative restrictions. Credit unions need relief from the arbitrary and outdated credit union member business lending (MBL) cap. This can be done by raising the current 12.25% limit to 27.5% for credit unions that meet certain criteria. We are pleased that Representatives Ed Royce and Greg Meeks have introduced bipartisan legislation in the House in the form of H.R. 1188 to raise the MBL cap. We also believe relief can be provided by raising the outdated "definition" of a MBL from last century's \$50,000 to a new 21st century standard of \$250,000, with indexing for inflation to prevent future erosion. Furthermore, MBLs made to veterans, non-profit religious organizations, businesses in "underserved areas", or small businesses with fewer than 20 employees should be given special exemptions for the arbitrary cap. Representative Jeff Miller has already introduced legislation in the House to provide this relief to veterans in the form of H.R. 1133.

Additionally, requirements to mail redundant and unnecessary privacy notices on an annual basis should be removed, provided that the credit union's policy has not changed and additional sharing of

The Honorable Mitch McConnell, The Honorable Harry Reid,
The Honorable John Boehner, The Honorable Nancy Pelosi
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information with outside entities has not been undertaken since the distribution of the previous notice. Bipartisan legislation has been introduced in both the Senate (S. 423 by Senators Jerry Moran and Heidi Heitkamp) and in the House (H.R. 601 by Representatives Blaine Luetkemeyer) to address this issue.

21st Century Data Security Standards

Credit unions are being adversely impacted by continued data breaches at numerous merchants. The cost of dealing with these issues hinders the ability of credit unions to serve their members. Congress needs to enact new 21st century data security standards for retailers and others that handle personal financial and account data, but have not current national standards. These new requirements should include: the payment of costs associated with a data breach by those entities that were breached; establishing national standards for the safekeeping of all financial information; require merchants to disclose their data security policies to their customers; requiring the timely disclosure of entities that have suffered a data breach; establishing enforcement standards for provisions prohibiting merchants from retaining financial data; requiring the timely notification of the account servicer if an account has been compromised by a data breach; and, requiring breached entities to prove a "lack-of-fault" if they have suffered from a data breach.

Finally, in addition to these five key areas, we would also urge your support for greater overall regulator oversight and transparency, including legislation introduced in the House by Representative Mick Mulvaney, H.R. 1176, the *NCUA Budget Transparency Act*. This legislation requires GAO to examine NCUA's budget and make recommendations for improving transparency at the agency.

Thank you for your consideration and attention to these important issues. 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, Jillian Pevo, at 703-842-2836.

Sincerely,



Brad Thaler
Vice President of Legislative Affairs

Attachment: NAFCU's Five-Point Plan for Regulatory Relief

cc: Members of the United States Senate
Members of the United States House of Representatives

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 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 in order to significantly enhance credit unions' ability to create jobs, help the middle class, and boost our nation's struggling economy. Built on a solid framework of recommendations that provide regulatory relief, we revised the five-point plan in February 2015 to the following:

1. Capital Reforms for Credit Unions

Modernize capital standards for credit unions in order to reflect the realities of the 21st century financial marketplace:

- › Authorize a true risk-based capital system for credit unions that more accurately reflects a credit union's risk profile.
- › Give the National Credit Union Administration (NCUA) authority to allow supplemental capital accounts for credit unions that meet certain standards.
- › Authorize the NCUA to further establish special capital requirements for newly chartered federal credit unions that recognize the unique nature and challenges of starting a new credit union. (Given that very few new credit unions have been chartered over the past decade, and in order to encourage the chartering of new credit unions.)

2. Field of Membership Improvements for Credit Unions

Make improvements to the *Federal Credit Union Act* to help enhance the federal credit union charter:

- › Improve the field of membership (FOM) restrictions that credit unions face, including expanding the criteria for defining "urban" and "rural."
- › Allow voluntary mergers involving multiple common bond credit unions.
- › Allow credit unions that convert to community charters to retain their current select employee groups (SEGs).
- › Allow all credit unions, regardless of charter type, to add underserved areas to their field of membership.
- › Authorize the NCUA to grant parity to a federal credit union on a broader state rule, if such a shift would allow them to better serve their members and continue to protect the National Credit Union Share Insurance Fund.

3. Reduce Consumer Financial Protection Bureau (CFPB) Burdens on Credit Unions

Credit unions did not cause the financial crisis, but have been victims in the new tide of regulations aimed at those institutions who did, with over 1,000 institutions disappearing since the passage of the Dodd-Frank Act, primarily due to the new regulatory burdens.

- › Exempt all credit unions from CFPB rulemaking and examination authority, since NCUA once again has been given authority to write all rules for credit unions, tailoring new proposals to meet the special nature of the credit union industry.
- › Authorize the NCUA to delay the implementation of a CFPB rule that applies to credit unions, if complying with the proposed timeline would create an undue hardship.



- › Authorize the NCUA to modify a CFPB rule for credit unions, provided that the objectives of the CFPB rule continue to be met.
- › Require the NCUA and the CFPB to conduct a look-back cost-benefit analysis on all new rules after three years. The regulators should be required to revisit and modify any rules for which the cost of complying was underestimated by 20% or more from the original estimate at the time of issuance.

4. Operational Improvements for Credit Unions

Credit unions stand willing and ready to assist in our nation's economic recovery. Our industry's ability to do so, however, is severely inhibited by antiquated legislative restrictions.

- › Modify the arbitrary and outdated credit union member business lending (MBL) cap to help create American jobs. This can be done by raising the current 12.25% limit to 27.5% for credit unions that meet certain criteria or by raising the outdated "definition" of a MBL from last century's \$50,000 to a new 21st century standard of \$250,000, with indexing for inflation to prevent future erosion. MBLs made to veterans, non-profit religious organizations, businesses in "underserved areas," or small businesses with fewer than 20 employees should be given special exemptions for the arbitrary cap.
- › Eliminate statutory requirements to mail redundant and unnecessary privacy notices on an annual basis, provided that the credit union's policy has not changed and additional sharing of information with outside entities has not been undertaken since the distribution of the previous notice.
- › Give the NCUA greater flexibility in how it handles credit union lending, such as the ability to establish longer maturities for certain loans.
- › Enact new examination fairness provisions to help ensure timeliness, clear guidance and an independent appeal process free of examiner retaliation.

5. 21st Century Data Security Standards

Credit unions are being adversely impacted by ongoing cyber-attacks against the United States and continued data breaches at numerous merchants. The cost of dealing with these issues hinders the ability of credit unions to serve their members. Congress needs to enact new 21st century data security standards that include:

- › Paying costs associated with a data breach by those entities that were breached.
- › Establishing national standards for the safekeeping of all financial information.
- › Requiring merchants to disclose their data security policies to their customers.
- › Requiring the timely disclosure of entities that have suffered a data breach.
- › Establishing enforcement standards for provisions prohibiting merchants from retaining financial data.
- › Requiring the timely notification of the account servicer if an account has been compromised by a data breach.
- › Requiring breached entities to prove a "lack-of-fault" if they have suffered from a data breach.

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

