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The Honorable Jeb Hensarling
Chairman
House Financial Services Committee
United States House of Representatives
Washington, D.C. 20515

The Honorable Maxine Waters
Ranking Member
House Financial Services Committee
United States House of Representatives
Washington, D.C. 20515

Re: Tomorrow's Hearing: "The Dodd-Frank Act Five Years Later: Are We More Stable?"

Dear Chairman Hensarling and Ranking Member Waters:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I write today in conjunction with tomorrow's hearing on the five year anniversary of the Dodd-Frank Act.

Credit unions have a long track record of helping the economy grow and making loans when other lenders have left various markets. This was evidenced during the recent financial crisis when credit unions kept making auto loans, home loans, and small business loans when other lenders cut back. Although credit unions continue to focus on their members, the increasing complexity of the regulatory environment, post Dodd-Frank, is taking a toll on the credit union industry. While NAFCU and its member credit unions take safety and soundness extremely seriously, the regulatory pendulum post-crisis has swung too far towards an environment of overregulation that threatens to stifle economic growth. As the National Credit Union Administration (NCUA) and the Consumer Financial Protection Bureau (CFPB) work to prevent the next financial crisis, even the most well intended regulations have the potential to regulate our industry out of business.

During the consideration of financial reform, NAFCU was concerned about the possibility of overregulation of good actors such as credit unions, and this is why NAFCU was the only credit union trade association to oppose the CFPB having rulemaking authority over credit unions. Unfortunately, many of our concerns about the increased regulatory burdens that credit unions would face under the CFPB have proven true. While there are credible arguments to be made for the existence of the CFPB, its primary focus should be on regulating the unregulated bad actors, not adding new regulatory burdens to good actors, like credit unions, that already fall under a prudential regulator. As expected, the breadth and pace of CFPB rulemaking is troublesome, and the unprecedented new compliance burden placed on credit unions has been immense.

While it is true that credit unions under \$10 billion are exempt from the examination and enforcement from the CFPB, all credit unions are subject to the rulemakings of the agency and they are feeling this burden. While the CFPB has the authority to exempt certain institutions,

such as credit unions, from agency rules, they have been reluctant to use this authority to provide relief.

The impact of this growing compliance burden is evident as the number of credit unions continues to decline. Since the second quarter of 2010, we have lost 1,250 federally-insured credit unions – over 17% of the industry. The overwhelming majority of these were smaller institutions below \$100 million in assets. While it is true that there has been a historical consolidation trend in the industry, the passage of the Dodd-Frank Act has served to accelerate that trend. The percentage of credit unions disappearing annually rose from a 3.4% average in the ten years prior to Dodd-Frank to an average annual disappearance rate of 3.9% in the years after Dodd-Frank. The fact is that many smaller institutions simply cannot keep up with the new regulatory tide and have had to merge out of business or be taken over.

This growing demand on credit unions is demonstrated in a 2012 NAFCU survey of our membership which found that 94% of respondents had seen their compliance burdens increase since the passage of the Dodd-Frank Act in 2010. A 2013 NAFCU survey of our membership found that over 70% of respondents 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 members are being forced to take time away from serving members to spend time on compliance issues.

Five years after the Dodd-Frank Act, one thing is clear: credit unions need meaningful regulatory relief, both from Congress and their regulators. While the creation of the Financial Stability Oversight Council (FSOC) in Dodd-Frank was supposed to help regulator coordination on rulemakings to reduce burdens, such coordination appears to be lacking, especially between NCUA and the CFPB. More needs to be done.

NAFCU has released a “Five Point Plan for Credit Union Regulatory Relief” and a list of “Top Ten Regulations to Eliminate or Amend,” both of which are included with this letter. We appreciate the Committee’s focus on regulatory relief in recent months and urge you to continue your work in this area by advancing the numerous relief proposals currently before the Committee.

We thank you for the opportunity to share our comments in conjunction with tomorrow’s hearing. If you have any questions or would like further information, please do not hesitate to contact me or NAFCU’s Vice President of Legislative Affairs, Brad Thaler, at (703) 842-2204

Sincerely,



Carrie R. Hunt

Senior Vice President of Government Affairs & General Counsel

cc: Members of the House Financial Services Committee

Enclosures

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.



NAFCU's Top Ten Regulations to Eliminate or Amend

- 1. 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.
- 2. Provide more meaningful exemptions for small institutions.** The number of credit unions continues to decline, as the compliance requirements in a post Dodd-Frank environment have grown to a tipping point where it is hard for many smaller institutions to survive. While NAFCU and our member credit unions take safety and soundness extremely seriously, we encourage the financial regulators to expand many of the compliance thresholds, including raising (1) the 100-remittance transfers allowance threshold; (2) the 500-origination limit for the small creditor exemption; and (3) the 5,000-servicing limit for the small servicer exemption.
- 3. Expand credit union investment authority** to allow credit unions to purchase mortgage servicing rights (MSRs). NAFCU strongly pushed for the expansion of credit unions' investment authority to include the ability to engage in limited derivatives activities and to securitize certain assets. NAFCU will continue to seek asset securitization for qualified credit unions. In addition, NAFCU will push NCUA to remove from its list of prohibited investment activities the ability to purchase MSRs. NAFCU believes a federally-insured credit union, at the very least, should not be prohibited from purchasing MSRs from other credit unions.
- 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 credit unions and their members. 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%; (3) securing removal of the 5 year relationship requirement; and (4) defining credit unions that have had a successful MBL program in place for at least five years as having a "history of primarily making MBLs."
- 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. Further, NCUA's regulations should be updated to clarify that the official sign is not required to be displayed on (1) mobile applications, (2) social media, and (3) virtual tellers.
8. **Seek improvements to the Central Liquidity Facility.** Reduce the amount of time that it takes for a credit union to secure access to liquidity. In addition, work with NCUA to secure changes the Central Liquidity Facility by removing the subscription requirement for membership and permanently removing the borrowing cap.
9. **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 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.
10. **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.

