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National Association of Federally-Insured Credit Unions

September 28, 2023

Charles Vice
Director, Financial Technology and Access
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: Future Engagement on Financial Technology and Access

Dear Mr. Vice:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing to express our support for the recent efforts by the NCUA in relation to the creation of the Office of Financial Technology and Access (OFTA) and your appointment as Director. NAFCU has continually advocated for the advancement and modernization of credit unions across the nation and believes that the creation of this office signifies a pivotal step in the right direction. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 138 million consumers with personal and small business financial service products. As the financial landscape continues to evolve, it is crucial for credit unions to be agile and innovative, ensuring that they can adequately cater to the needs of a diverse array of consumers and remain competitive. In this respect, OFTA can act as a forum for technological solutions that promise enhanced accessibility and inclusivity, especially for underserved populations. NAFCU believes that these efforts can usher in a future where fintech solutions bridge existing gaps in access to financial services, ensuring that every individual has equitable opportunities for financial well-being with the help of their community financial institution.

NAFCU remains excited about the ability of your office to learn from credit unions and the perspectives and insight that you and your office can provide to the NCUA Board. Your willingness to engage with NAFCU during a meeting in February 2023 on digital assets and related technologies was much appreciated and highlighted the importance of mutual dialogue and engagement. Additionally, we eagerly await the forthcoming webinar, "Fintech and ACCESS: Future Possibilities for Enhancing Financial Inclusion Through the Use of Technology." Such initiatives not only foster knowledge-sharing but also catalyze a collaborative approach, something that NAFCU and its member credit unions deeply value.

While these are encouraging first steps, there may be an untapped potential for furthering innovation within the credit union space. NAFCU requests that the OFTA offer greater transparency regarding its current and future initiatives and do more to foster a proactive environment wherein credit unions can experiment, learn, and innovate. The institution of Tech Sprints, sandboxes, and potential pilot programs can serve as instrumental platforms for this very

purpose, paving the way for trailblazing solutions that would benefit both credit unions and the members they serve.

As the OFTA considers different ways to support credit union innovation, the CFPB's former innovation programs may serve as a source of inspiration. The CFPB's Office of Innovation, which operated from 2018 to May 2022, permitted financial institutions to apply for No Action Letters (NALs) and offered two types of waiver programs: the Trial Disclosure Program (TDP) and the Compliance Assistance Sandbox (CAS). Collectively, these innovation programs were themed around facilitating innovation in consumer financial markets; however, their applicability was not strictly limited to new or experimental technologies. Each of the policies was designed to provide a particular form of relief or safe harbor, which varied in scope and duration. TDP and CAS relief was generally time limited, whereas relief under the NAL policy was not.

The TDP was designed to permit companies to offer trial disclosures, limited in time and scope, to improve upon existing consumer disclosures. A program similar to the TDP might be offered by the OFTA to facilitate innovation in credit union advertising, particularly in digital formats, which are not specifically addressed in Part 740 of the NCUA's regulations.

The goal of the CFPB's former NAL policy was to broadly facilitate innovation and experimentation where regulatory uncertainty might exist for certain emerging products or services. The NCUA has typically provided guidance on new technologies and services through letters to credit unions. However, credit unions may wish for greater certainty. Under the CFPB's former NAL policy, finalized in September 2019, a recipient would have assurance that the CFPB would not initiate an enforcement or supervisory action with respect to a specific matter. The NCUA might consider how to leverage a similar policy to signal its supervisory intentions with respect to particular services and their associated compliance approaches (e.g., implementing a specific and novel use of distributed ledger technology).

The CAS operated in a similar fashion to the CFPB's NAL policy, but its use was predicated on an applicant's ability to produce evidence of regulatory uncertainty. The CAS was a mechanism for clarifying how federal consumer financial law applied to specific aspects of particular products and services. A similar policy adopted by the OFTA could apply more narrowly to the regulations administered by the NCUA. Approvals made under the CAS policy offered a regulated entity the binding assurance that certain aspects of a product or service are compliant with specified legal provisions. In this regard, the CAS was similar in function to a legal opinion letter. NAFCU does not expect the OFTA to replicate the functions of the NCUA's Office of General Counsel; however, a policy similar to the CAS might be used to streamline OGC's consideration of novel compliance questions that are particular to a single applicant. Unlike a legal opinion letter, an applicant-specific CAS approval could be narrowly tailored to specific products or services, compliance programs, or conditioned on data sharing.

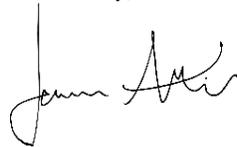
In general, a credit union's willingness to provide specific information or offer additional data in support of its request for regulatory certainty should weigh in favor of granting requests that are in the nature of waivers or NALs. The OFTA may find it easier to provide limited approvals and legal determinations by focusing on an applicant's specific facts and circumstances. For the sake of efficiency, the OFTA may wish to emulate policies like the TDP, CAS or NAL programs by limiting their scope and applicability to individual recipients, but with the option for other credit unions to model their own requests off of previously approved applications or requests.

Furthermore, direct engagement between OFTA, trade associations such as NAFCU, and credit unions will result in information sharing and allow hurdles to be identified and remediated, to the benefit of all parties. This can be accomplished through roundtables, forums, and similar venues. In this spirit of collaboration, NAFCU also requests a meeting with you and your office at your earliest convenience to discuss shared priorities and areas for future partnership. Our shared objective to empower and innovate can be greatly augmented with a synergistic approach, and we believe a meeting would set the stage for just that.

Conclusion

NAFCU appreciates your commitment to making financial technology an enabler rather than an impediment for credit unions. We look forward to further enhancing our collaborative efforts, ensuring a brighter, more inclusive future for all. If you have any questions, please do not hesitate to contact me at 703-842-2268 or jakin@nafcu.org.

Sincerely,

A handwritten signature in black ink, appearing to read "James Akin". The signature is fluid and cursive, with a large initial "J" and "A".

James C. Akin

Senior Regulatory Affairs Counsel