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National Association of Federally-Insured Credit Unions

May 17, 2021

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

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

Re: Oversight of Prudential Regulators Hearing

Dear Chairwoman Waters and Ranking Member McHenry:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing to share NAFCU's perspective on the issues before the Committee as part of Wednesday's hearing on the Oversight of Prudential Regulators. We thank you for your continued focus on oversight of the National Credit Union Administration (NCUA) and other prudential regulators. As the Committee carries out its oversight functions, we urge you to keep our concerns on these key issues in mind.

<u>NAFCU Opposes Granting NCUA Oversight Authority Over Third-Party Vendors</u>

NAFCU is opposed to the discussion draft of the "NCUA Oversight of Third Party Vendors Act" that has been proposed as part of the hearing. NAFCU and our member credit unions believe that cybersecurity, including the security of vendors that credit unions do business with, is an important issue. However, we are opposed to granting additional authority to NCUA to examine third parties at this time. NAFCU believes in a strong NCUA, but we also believe that the NCUA should stay focused on where their expertise lies—regulating credit unions. Credit unions fund the NCUA budget. Implementing such new authority for NCUA would require significant expenditures by the agency. The history of NCUA's budget growth has shown that these costs would ultimately be borne by credit unions and their members.

There are other tools already in place for the agency to get access to information about vendors. We believe the agency's time and resources are better focused on reducing regulatory burden by coordinating efforts among the financial regulators. The NCUA sits on the Federal Financial Institutions Examination Council (FFIEC) with the Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), and the Federal Reserve. The FFIEC was created to coordinate examination findings and approach in the name of consistency and to avoid duplication. This means that as a member of the FFIEC, NCUA should be able to request the results of an examination of a core processor from the other regulators and not have to send another exam team from NCUA into their business and duplicate an examination. This would seem to be an unnecessary burden on these small businesses. Additionally, if NCUA did its own examination, the likelihood of finding anything the other regulators did not would seem to be close to nil.

Instead of granting NCUA vendor examination authority, Congress should encourage the agency to use the FFIEC and gain access to the information on exam findings on companies that have already been examined by other regulators. This would address NCUA's concerns without creating additional costs to credit unions and increasing regulatory burdens on credit unions and small businesses. It would seem to be one way to address the issue without creating new regulatory and cost burdens on credit unions. As such, we urge the Committee to reject this draft legislation.

The National Credit Union Share Insurance Fund (SIF)

While NAFCU applauds NCUA Chairman Todd Harper, the NCUA Board and the agency's leadership for their prudent oversight of the SIF during the pandemic, we do not think changes to the structure of the SIF or a premium charge on credit unions are warranted at this time. The fact that the SIF has fared so well during the past 12 months provides ample evidence that the fund is strong and that credit unions were well-capitalized and had strong balance sheets entering the crisis. This provided them with the necessary scope to extend assistance to their members during the pandemic. The current language of the *Federal Credit Union Act* (FCU Act) creates this strong insurance fund for credit unions.

The FCU Act creates a SIF that is structured fundamentally differently than the Deposit Insurance Fund (DIF) run by the FDIC. NAFCU is opposed to any efforts that call for legislative changes to the FCU Act to give NCUA the powers to manage the SIF similar to the DIF, such as allowing new premium assessments when they are not needed, removing upper limits on the normal operating level, or making changes that threaten the mutual nature of the fund. The FCU Act recognizes the importance of not hitting credit unions and their members with an unnecessary premium through very specific language that gives the NCUA an eight-year (or longer) window to restore the SIF equity ratio to 1.2 percent should it fall below that level. We caution against any calls for statutory changes to the SIF that go against the spirit of this provision in the Act—a provision that is designed not only to keep credit unions healthy, but also to keep funds available to credit union members.

The Durbin Amendment

NAFCU opposes any effort to extend debit interchange price caps or routing requirements to credit cards. Since the passage of the Durbin amendment on debit interchange rates in the *Dodd-Frank Act*, the retail industry has not followed through on their promise to pass on interchange fee savings to their customers. Now they are asking for the same failed policies to be extended or expanded. This would cause irreparable harm to credit unions and could damage the availability of credit to consumers. The electronic payments system is a two-sided market, with consumers on one side and merchants on the other. Both sides benefit from the arrangement, with card networks setting interchange rates based on the cost of doing business, and the benefit to consumers and merchants. The credit card system allows consumers to purchase goods and services from merchants that they may not be able to otherwise. The pandemic provided even more evidence that the electronic payments system offers real value to merchants and consumers alike. Ultimately, merchants receive far more value from accepting electronic payments than they pay in interchange fees. Any new caps or requirements impacting interchange fees would only hurt community institutions such as credit unions and the American consumer.

NAFCU Supports the "Expanding Financial Access for Underserved Communities Act"

NAFCU supports the discussion draft of the "Expanding Financial Access for Underserved Communities Act" which would expand the ability of credit unions to add underserved areas to their field of membership (FOM). In 1998, as part of the *Credit Union Membership Access Act*, Congress provided federal credit unions with the ability to add underserved areas to their FOM. However, subsequent legal challenges by the banking industry over the reading of the statute led the NCUA to limit this authority to only multiple common bond credit unions in 2006.

As Congress grapples with ways to ensure that underserved and unbanked populations have access to affordable financial services, credit unions want to be able to help. Unfortunately, many credit unions are limited by the restriction on adding underserved areas to their FOM. One area where this legislation would be extremely helpful is in rural areas. According to a recent report by the Federal Reserve, between 2012-2019 credit unions grew their branch presence in rural areas by 2%, while community banks decreased rural branches by 5% and large banks decreased rural branches by 19%. Credit unions are proud to be at the forefront of efforts to expand financial services access to rural areas, many of which are underserved, and want to do more. However, not all credit unions can add underserved areas to their field of membership, making it challenging for some to expand in rural areas. We urge the Committee to support this draft legislation that would allow all types of credit unions to add underserved areas and make it easier to make critical member business loans to small businesses in those areas.

H.J. Res. 35, Resolution of Disapproval on the OCC's "True Lender" Rule

NAFCU supports H.J.Res.35, which would repeal the rule submitted by the OCC relating to "National Banks and Federal Savings Associations as Lenders" (the "True Lender rule"). The OCC finalized its True Lender rule in October 2020, which became effective in December 2020, allowing banks and federal savings and loans to provide their charter for online lenders to deliver high-cost loans with annual rates exceeding 100 percent that evade state consumer protections and usury caps. In this scheme also known as "rent-a-bank," online lenders essentially rent bank charters and documentation to originate their loans in the name of the OCC-chartered banking institution, arguing that it is now a "bank loan" exempt from state rate caps.

These predatory payday lenders are operating on an uneven playing field, relying upon the benefits of the OCC's federal preemption to circumvent consumer protections and place borrowers in harms' way. What is most concerning is the lasting damage this form of wealth extraction has on household financial security and on communities. Given the damage caused by these high-cost, unaffordable loans to borrowers' balance sheets, it limits the ability for legitimate and responsible lenders to support those households and communities with productive credit.

Credit unions have been on the frontlines during the pandemic, working to ensure their members stay afloat financially with consumer-friendly financial products. Credit unions have voluntarily implemented programs to protect their members' financial health, including skipping payments without penalty, waiving fees, low or no-interest loans, loan modifications and no interest accruals. Moreover, credit unions are able to meet their members' demands for short-term, small dollar loans, while ensuring accessibility, safety, and affordability. Oftentimes, credit unions offer short-term, small-dollar loans as a service to members with the associated fees solely covering the expenses of loan servicing.

The FCU Act establishes an interest rate ceiling cap of 15 percent on loans and provides the NCUA with flexibility to establish a higher interest rate for up to 18 months after considering certain statutory criteria. The current interest rate is set at 18 percent and has been in place since 1987. The NCUA has authorized a program referred to as payday alternative loans (PALs) to enable credit unions to offer their members a reasonable alternative to high-cost payday loans. The FCU Act establishes the interest rate ceiling for PALs at an additional 1000 basis points above the prevailing interest rate, so the current maximum allowable interest rate for a PAL is 28 percent. This maximum interest rate is far from the exorbitant interest rates charged by payday lenders and provides a safe, affordable option for consumers in need of a quick, short-term, small-dollar loan. The Consumer Financial Protection Bureau (CFPB) and CFPB Director-nominee Rohit Chopra have previously recognized the benefit credit union PALs provide to their communities.

Rather than pursuing problematic options like the OCC's True Lender rule to increase access to credit, we would suggest Congress consider consumer-friendly alternatives such as expanding credit unions' ability to offer PALs. Too many Americans are unbanked, underbanked, or underserved by financial institutions, and do not have the access that they need to financial services. Credit unions stand ready to help with financial literacy education and access to loans and other financial products, including PALs, but many are limited in their ability to add underserved areas to their fields of membership. Allowing all credit unions to add underserved areas to their fields of membership is one way to help those who need it most have access to capital without burdening the federal government. This request has bipartisan NCUA Board support.

At a time when low-income consumers can least afford it, the OCC's rule is enabling high-cost lenders to prey on consumers that are on even more precarious financial footing, which could threaten COVID-19 economic recovery efforts and the good work of consumer-friendly financial institutions like credit unions. We urge you to support H.J.Res.35 to overturn the True Lender rule and stop this harmful practice.

Fintech Charters

Fintech companies are enjoying unprecedented liberalization of bank chartering rules to either acquire or become banks. Recent developments with both the OCC's new chartering options and the FDIC's approval of deposit insurance for Industrial Loan Company (ILC) applicants also present problems. In each case, a nonbank company can potentially evade regulation under the *Bank Holding Company Act* (BHCA), either because of a statutory loophole unique to ILCs, or because the entity does not accept deposits. Lack of BHCA coverage raises serious concerns regarding the quality and extent of supervision for these specialized or limited purpose banking entities. Chartering additional ILCs or granting new licenses to payments companies could also weaken the safety and soundness of the wider financial system.

In certain cases, specialized, limited purpose bank charters may allow a fintech to operate with national bank privileges but without the same prudential safeguards that apply to traditional banks and credit unions. While some may characterize these chartering schemes as innovative, they are ultimately loopholes which invite unnecessary risk into the financial system and create an uneven playing field. As NAFCU has previously communicated to the Committee, we support efforts to ensure that these new entities have oversight and are properly regulated so that they compete on a level playing field with other regulated institutions.

NAFCU Supports Making Central Liquidity Facility (CLF) Changes Permanent

We would also like to express our support for the "Central Liquidity Facility Enhancement Act" which would make the important changes to the CLF made during the pandemic permanent to better serve credit unions moving forward. Taking this step now will help ensure that NCUA has a critical tool to help credit unions the next time financial uncertainty arises.

Other Draft Legislation Before the Committee

NAFCU also supports efforts to promote new credit unions, and we urge support for the discussion draft of the "Promoting New and Diverse Depository Institutions Act" which would take important steps to help promote de novo institutions by studying the challenges facing these institutions and having regulators develop a strategic plan to meet those challenges.

We also support the goal of the draft "Expanding Opportunities in Banking Act" which would allow the opportunity for those convicted of certain minor offenses to work in financial services and would note that this was an initiative of NCUA Board Member Rodney Hood when he served as Board Chairman.

Thank you for the opportunity to share our thoughts on the range of issues before the Committee at this hearing. Should you have any questions or require additional information, please do not hesitate to contact me or Sarah Jacobs, NAFCU's Associate Director of Legislative Affairs, at (571) 289-7550 or sjacobs@nafcu.org.

Sincerely,

Brad Thaler

Brad Thaler
Vice President of Legislative Affairs

cc: Members of the Committee on Financial Services