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National Association of Federally-Insured Credit Unions

February 16, 2022

The Honorable Ed Perlmutter
Chairman
House Financial Services Committee
Subcommittee on Consumer Protection
and Financial Institutions
United States House of Representatives
Washington, DC 20515

The Honorable Blaine Luetkemeyer
Ranking Member
House Financial Services Committee
Subcommittee on Consumer Protection
and Financial Institutions
United States House of Representatives
Washington, DC 20515

Re: Tomorrow's Hearing: "Small Business, Big Impact: Ensuring Small and Minority-Owned Businesses Share in the Economic Recovery"

Dear Chairman Perlmutter and Ranking Member Luetkemeyer:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) to share our thoughts on issues of importance to credit unions ahead of tomorrow's hearing, "Small Business, Big Impact: Ensuring Small and Minority-Owned Businesses Share in the Economic Recovery." NAFCU advocates for all federally-insured not-for profit credit unions that, in turn, serve over 127 million consumers with personal and small business financial service products.

NAFCU appreciates your work to help ensure small and minority-owned businesses' needs are met. We share the Subcommittee's concern about the lack of credit for women- and minority-owned small businesses. Credit unions have a long history of helping underserved communities due to their cooperative structure, and nothing demonstrates this better than the beginning of the COVID-19 pandemic, when our members extended loans to small businesses through the Paycheck Protection Program (PPP) that had been turned away by for-profit banks. According to a NAFCU survey of our members, 87% of respondents had small business members join the credit union to secure PPP funding.

However, NAFCU has concerns with the legislative proposals under consideration today and the impact they could have on credit unions that are trying to help their small business members. These bills could end up removing flexibility for credit unions and increasing their regulatory compliance burdens, making it harder to help small businesses. We believe a better approach would be to focus on increasing access to funding for small businesses by reducing arbitrary barriers to capital for them. We would encourage consideration of H.R. 1471, the *Access to Credit for Small Businesses Impacted by the COVID-19 Crisis Act*, introduced by Representatives Brad Sherman and Brian Fitzpatrick last year. This critical legislation would help main street small businesses by providing temporary relief for one year after the COVID-19 national emergency has ended from the arbitrary cap on credit union member business lending (MBL) for loans made to small businesses trying to recover from the pandemic. This legislation would have an immediate benefit to small businesses

with no cost to the federal government. We also urge your support for H.R. 5189, the bipartisan *Member Business Loan Expansion Act*, from Representatives Vincente Gonzalez and Fitzpatrick, as well as the draft of the *Expanding Financial Access for Underserved Communities Act*, both of which would help small businesses and are pending before the Committee.

Additionally, as the Subcommittee looks at this issue, we would like to take this opportunity to share our concerns with the recent notice of proposed rulemaking (Proposed Rule) under Section 1071 of the Dodd-Frank Act at the Consumer Financial Protection Bureau (CFPB). NAFCU has a series of concerns about the proposal and its impact on access to credit from credit unions for small businesses, the chief of which are outlined below:

Definition of Covered Financial Institutions

We believe it important that the CFPB establish a clear threshold for exempting smaller community lenders from the rule. The proposed 25 loan threshold is far too low and would unjustifiably impact many smaller lenders. If the CFPB is not going to use its authority under Section 1022 to exempt credit unions from this rule, a practical and workable higher threshold of at least 500 loans must be established.

Definition of Small Business

The Proposed Rule would define a small business as any business with prior-year gross annual revenue of \$5 million or less. At this level, financial institutions would have to collect data related to businesses that are not truly small. Such an arbitrarily high threshold will unnecessarily raise the cost of small business borrowing and also make it more difficult for stakeholders to draw statistically significant conclusions about the health and financial needs of truly small businesses. We suggest a lower revenue threshold of \$1 million for this definition.

Covered Credit Transactions

While we support the CFPB defining covered credit transactions in the Proposed Rule, we believe the CFPB should also exempt loans under the de minimis definition of MBL found in the *Federal Credit Union Act* (FCU Act). Since 1998, the FCU Act and the National Credit Union Administration (NCUA) have defined loans of less than \$50,000 not to be MBLs. As such, the NCUA does not require credit unions to report these loans as MBLs, even if they may be business-purpose loans. Subjecting non-MBL loans to Section 1071 coverage could affect the availability of these smaller size loans due to the increased costs associated with Section 1071 compliance. This inconsistency with the NCUA's treatment of these loans will compound the negative impact of the new requirements on credit unions. We recommend the CFPB establish an exemption for loans under the de minimis amount for MBLs established in the FCU Act.

Compliance Deadline

The Proposed Rule's uniform 18-month mandatory compliance deadline is aggressive even for the largest financial institutions and is difficult for credit unions. We hear from our member credit unions that their previous experience with information technology (IT) vendors in adapting their products to comply with major rulemakings has shown that timeframe to be unworkable. Credit unions would find themselves forced to wait for one or more IT vendors to update, redeploy, and

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cross-test Section 1071-compliant small business lending programs and tools. NAFCU believes that any compliance deadline should be no earlier than 36 months after the final rule is issued.

We thank you for the opportunity to share our thoughts and look forward to continuing to work with you to ensure small and minority-owned businesses are included in the economic recovery from COVID-19. Should you have any questions or require any additional information, please contact me or Lewis Plush, NAFCU's Associate Director of Legislative Affairs, at (703) 258-4981 or lplush@nafcu.org.

Sincerely,

A handwritten signature in cursive script that reads "Brad Thaler".

Brad Thaler

Vice President of Legislative Affairs

cc: Members of the Subcommittee on Consumer Protection and Financial Institutions