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President & Chief Executive Officer

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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 to receive the CFPB semi-annual report

Dear Chairman Hensarling and Ranking Member Waters:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association exclusively representing the federal interests of our nation's federally-insured credit unions, I write today in conjunction with tomorrow's hearing to receive the Consumer Financial Protection Bureau's (CFPB) semi-annual report to Congress. NAFCU urges the committee to press the CFPB to provide greater relief to credit unions.

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 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 the CFPB's rulemaking is troublesome, and the unprecedented new compliance burden placed on credit unions has been immense.

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 1,280 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 this trend. 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.

One way that the CFPB can provide immediate help is by improving the guidance it gives with its rulemakings. In attempting to understand ambiguous sections of CFPB rules, NAFCU and many of its members have reached out to the CFPB to obtain legal opinion letters (written guidance) as to the agency's interpretation if its regulations. Many other financial agencies, including the National Credit Union Administration (NCUA), issue legal opinion letters to help institutions understand otherwise ambiguously written rules. The CFPB has declined to do so. What they have done is set up a "help line" where financial institutions can call for oral guidance from the agency. While this is helpful, there are reports of conflicting guidance being given depending on who answers the phone. This is not just unhelpful, but can be confusing when NCUA examines credit unions for compliance with CFPB regulations. NAFCU would appreciate the CFPB establishing procedures for institutions to get much needed official written legal advisory opinions to provide clearer guidance. Setting up such a process within the CFPB would be beneficial to credit unions and other financial institutions.

A prime example of where additional guidance would be helpful is in TRID implementation. Credit unions worked diligently for nearly two years to implement the TILA/RESPA integrated disclosures rule, at a significant cost of both staffing and resources. Following the implementation of TRID last fall, credit unions continue to struggle to offer consumers the loans of their choice in the face of complex and confusing regulation. NAFCU appreciates that the CFPB is working to resolve any unintended consequences of its final regulation and to provide regulatory guidance which is both clear and useful. NAFCU continues to believe that the CFPB must actively and transparently coordinate with NCUA to establish clear expectations and guidance in anticipation for examination, especially as NCUA has indicated that TRID Compliance will be a supervisory focus for the 2016 examination cycle. We hope CFPB Director Cordray will also indicate that, in addition to providing more guidance, the Bureau is continuing to extend its hold harmless period for resolving TRID issues.

Another way that the CFPB can provide relief to credit unions is by using its broad legal authority granted by Sec. 1022 of the *Dodd-Frank Act* to exempt credit unions from various rulemakings. Given the unique member-owner nature of credit unions and the fact that credit unions did not participate in many of the questionable practices that led to the financial crisis, subjecting credit unions to rules aimed at large bad actors only hampers their ability to serve their members. A recent Government Accountability Office (GAO) report found that financial services have been limited or discontinued by many community-based financial institutions due to new regulations. While some the rules of the CFPB may be well-intentioned, many credit unions do not have the economies of scale that large for-profit institutions have, and, as the GAO report indicated, may end a product line or service rather than face the hurdles of complying with new regulation. While the CFPB has taken some positive steps, such as their small creditor exemption, NAFCU has long urged that more needs to be done to exempt credit unions from burdensome rulemakings.

Director Cordray recently suggested that Congress did not give the CFPB the authority to exempt credit unions from its rulemakings. The previously mentioned Sec. 1022 of the *Dodd-Frank Act* specifically grants the Bureau authority to exempt "any class of covered persons" from any provision or rule issued under Title X. Just this week, a bipartisan majority of 329 Members of the House of Representatives wrote to Director Cordray to urge him to do more in this area. We hope Director Cordray will agree and respond accordingly to provide more regulatory relief by better tailoring its regulations.

Some other CFPB issues NAFCU is monitoring include:

- Overdraft: Credit unions have an established history of member satisfaction with their overdraft programs, yet these programs could be curtailed by a potential rulemaking from the CFPB. For the past two years, the CFPB has listed overdraft on its rulemaking agenda. However, the timeframe for its release continues to be pushed back because the CFPB lacks the statutory authority to set a hard cap on overdraft fees, and there is a lack of consumer support for curtailing overdraft programs. NAFCU believes that the CFPB should carefully consider the long-term implications of any changes to overdraft protection regulations, especially since consumers may end up actually paying more fees, such as NSF fees for checks. Further, credit unions need the flexibility to tailor their programs as necessary, as there is no one-size-fits-all approach.

- HMDA: Late last year the CFPB finalized several substantive changes to HMDA (Regulation C), including, (1) requiring credit unions to report additional data points, (2) making HELOC reporting mandatory, and (3) changing the coverage test so credit unions that originated 25 covered loans or less, excluding open-end lines of credit, in the previous calendar year would be exempt from HMDA reporting requirements. NAFCU strongly supports HMDA's goal of ensuring fair lending and anti-discriminatory practices, but is concerned that many aspects of the proposal may not further this goal and may only serve to impose significant additional compliance and reporting burdens. Given the tremendous burden that these changes will place on credit unions, NAFCU believes that the Bureau has failed to provide compelling reasons how the collection of the additional data ensures fair access to credit in the housing market.

- FCC TCPA: NAFCU is concerned about the impact that the Federal Communication Commission's (FCC) recent Declaratory Ruling and Order on the Telephone Consumer Protection Act (TCPA) will have on credit unions' ability to contact their members about important notifications and timely updates about financial developments that will impact their existing accounts. Just recently, FCC Chairman Tom Wheeler indicated that they are collaborating with the CFPB as it contemplates changes, including drafting a proposed rule granting exemptions for collection of federal debt.

Finally, we believe that one way to improve the CFPB would be to enact H.R. 1266, the *Financial Product Safety Commission Act of 2015*. This legislation would change the leadership structure from a single director to a five member commission appointed by the President. NAFCU has long held the position that, given the broad authority and awesome responsibility vested in the CFPB, a five person commission has distinct consumer benefits over a single director. Regardless of how qualified one person may be, a commission would allow multiple perspectives and robust discussions of consumer protection issues throughout the decision making process. Credit unions and their nearly 103 million members are greatly impacted by the actions of the CFPB and believe the operating structure of the CFPB should be as fair and transparent as possible. We appreciate the Committee's work to favorably report this legislation and hope you will work with leadership to bring it to the floor for passage by the House as soon as possible.

NAFCU looks forward to working with the committee to continue to make improvements to the CFPB and provide regulatory relief to credit unions. We hope that you will use this week's hearing to push the CFPB to take greater steps to provide relief to credit unions under its current authority. We thank you for the opportunity to share our thoughts with you today. If you have any questions, or if my colleagues or I can be of assistance in any way, please do not hesitate to contact me or NAFCU's Vice President of Legislative Affairs, Brad Thaler, at (703) 842-2204.

Sincerely,

B. Dan Berger
President and CEO

cc: Members of the House Financial Services Committee