



3138 10th Street North
Arlington, VA 22201-2149
703.842.2215 | 800.336.4644
f: 703.522.2734
dberger@nafcu.org | nafcu.org

B. Dan Berger
President & Chief Executive Officer

National Association of Federally-Insured Credit Unions

April 25, 2017

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

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

Re: Tomorrow's hearing: "A Legislative Proposal to Create Hope and Opportunity for Investors, Consumers, and Entrepreneurs"

Dear Chairman Hensarling and Ranking Member Waters:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only trade association exclusively representing the federal interests of our nation's federally-insured credit unions, I write to share our thoughts on, and express our support for, the updated discussion draft language of the *Financial CHOICE Act* ahead of tomorrow's scheduled hearing on the legislation.

Overview

During the consideration of financial reform, NAFCU was concerned about the possibility of over-regulation of good actors, such as credit unions, and this is why NAFCU was the only financial services trade association to oppose the Consumer Financial Protection Bureau (CFPB) having authority over credit unions. Unfortunately, many of our concerns about the increased regulatory burdens that credit unions would face under the *Dodd-Frank Act* 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 1,660 federally-insured credit unions – over 22% of the industry. The overwhelming majority (96%) 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, this trend has accelerated since the passage of the *Dodd-Frank Act*. Many smaller institutions simply cannot keep up with the new regulatory tide and have had to merge out of business or simply shut their doors. There is an urgent need for Congress to enact meaningful regulatory relief.

Regulatory burden is the top challenge facing credit unions today. Reducing burdensome and unnecessary regulatory compliance costs is the only way for credit unions to thrive and continue to provide their member-owners with basic financial services and the exemplary service they need and

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deserve. NAFCU believes that credit unions must have a positive regulatory environment that allows them to succeed. We believe this environment includes:

- The ability to pursue healthy fields of membership that are not limited by outdated laws or regulatory red tape;
- The establishment of capital requirements appropriate to risk, and not a “one size fits all” approach that treats credit unions like riskier institutions or establishes regulatory capital regimes that are solutions in search of a problem;
- An independent federal regulator that can address the specific challenges of the industry by tailoring a regulatory regime that recognizes the unique nature of credit unions. This includes exempting credit unions from CFPB rulemaking and returning that authority to the National Credit Union Administration (NCUA);
- Removing outdated laws and regulations that hinder credit unions’ ability to meet the lending needs of their members, whether natural persons or small businesses;
- Guaranteed access to a healthy secondary mortgage market that recognizes the quality of credit union loans and prices them fairly based on their quality.

We are pleased that the Committee has been a policy partner with NAFCU in addressing many of these issues in this Congress. We look forward to working with the Committee to bring additional relief to community institutions such as credit unions.

The Financial CHOICE Act discussion draft

The new discussion draft of the *Financial CHOICE Act* is a comprehensive bill that contains a number of NAFCU-supported initiatives:

- ✓ **NAFCU supports a strong and vibrant industry that allows credit unions to grow.** Many elements of the discussion draft will help create an environment that will allow credit unions to succeed. Changes to mortgage rules; changes to HMDA limits; and examining appropriate risk capital levels are key parts of the bill. The provision eliminating the Durbin interchange price cap and routing restrictions is among the most significant aspects of this discussion draft for credit unions and we strongly urge you to maintain it throughout the legislative process.

We would also encourage the Committee to go further in the final bill by adding provisions providing credit unions relief from the arbitrary member business lending cap and providing greater clarity on the ability for all credit unions to add underserved areas to their fields-of-membership. The Committee could improve the capital "off-ramp" provision for credit unions by adding language that recognizes their unique nature and limited ability to raise capital, which disadvantages them in returning to the 10% threshold envisioned in the bill.

- ✓ **NAFCU supports a strong, independent NCUA as the primary regulator for credit unions.** The discussion draft retains the cost-effective three-member structure of the NCUA Board as NAFCU had urged. It also brings the NCUA under the congressional appropriations process - a move that NAFCU feels is unnecessary given that credit unions fund the NCUA,

and we would urge further revision of this provision to only require approval of NCUA budget increases above inflation.

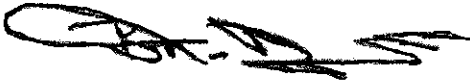
The CFPB has usurped many areas of NCUA authority under the guise of consumer protection. NAFCU and our member credit unions support consumers every day. The discussion draft will convert the CFPB into a consumer law enforcement agency without supervision authority, eliminating many of its powers, including its authority with respect to unfair, deceptive or abusive acts and practices (UDAAP). This change will shift authority back to the NCUA. In addition, the CFPB will no longer have preemption over consumer laws in contrast to the functional regulators. The proposed CFPB reforms, taken overall, would provide credit unions with some comprehensive regulatory relief from the current CFPB, allowing them to focus on serving their members. We would encourage the Committee to go even further and expand CFPB exemption authority under Section 1022 of the *Dodd-Frank Act*. One way this could be addressed would be to include the language of H.R. 1264, the *Community Financial Institutions Exemption Act*.

- ✓ **NAFCU supports transparency and independent oversight.** The discussion draft creates many opportunities for appropriate oversight of NCUA. First, NCUA's budget will have the opportunity to be reviewed in a budget hearing. Second, an independent appeals process will be created for credit union exams. Third, transparency regarding the overhead transfer rate will be ensured.
- ✓ **NAFCU supports appropriate, tailored regulation for credit unions promulgated with appropriate debate and dialogue.** The discussion draft will ensure robust cost-benefit analyses for regulations and the ability for regulations to be reviewed by Congress. NAFCU supports cost-benefit analysis, and in any final legislation wants to ensure that we have an effective regulatory environment where positive regulations may be easily implemented and negative ones may be quickly eliminated. NAFCU believes that a board structure provides the appropriate mechanism for any agency to approve regulations since it ensures debate representative of multiple points of view. Accordingly, NAFCU believes a commission structure is the ideal way to govern the CFPB. NAFCU also believes that enforcement orders should not take the place of regulation.
- ✓ **NAFCU supports an even playing field.** NAFCU believes that credit unions should have as many opportunities as banks and non-regulated entities to provide provident credit to our nations' consumers and that the relief provided in the discussion draft will help. Many elements in the discussion draft do not directly impact credit unions, but NAFCU wants to ensure that all similarly situated depositories follow the same rules of the road and that unregulated entities do not escape all oversight. NAFCU believes that further examination of whether the 10% domestic deposit cap on banks should be lifted is warranted as the bill moves through the legislative process. We also would hope that the discussion draft could be further clarified to ensure that there is a federal regulatory structure, whether the new CFPB/Consumer Law Enforcement Agency or not, for non-bank financial services market players that do not have a prudential regulator.

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NAFCU thanks you for the opportunity to share our thoughts. We appreciate Chairman Hensarling's effort to provide regulatory relief and support the discussion draft of the *Financial CHOICE Act*. We would urge the Committee to support the legislation as well. We look forward to working with you on the *Financial CHOICE Act* as it moves through the legislative process. 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 or bthaler@nafcu.org.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Dan Berger", with a stylized flourish at the end.

B. Dan Berger
President and CEO

cc: Members of the House Financial Services Committee