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National Association of Federally-Insured Credit Unions

November 9, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Charles E. Schumer
Minority Leader
United States Senate
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Re: Credit Union Priorities for the Remainder of the 116th Congress

Dear Leader McConnell, Speaker Pelosi, Leader Schumer, and Leader McCarthy:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) to ask for your support for our nation's credit unions as you complete your legislative work for the 116th Congress. As you are aware, NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 122 million consumers with personal and small business financial service products. As Congress reconvenes, we urge you to address credit union concerns in the following issues:

National Defense Authorization Act (NDAA)

Protecting Defense Credit Union Leases

First, as you continue the conference process to resolve the differences between H.R.6395, the *William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021*, and S.4049, the *National Defense Authorization Act for Fiscal Year 2021*, we ask that you keep in mind our defense credit unions and the men and women in the armed forces that they serve. We would like to express our concern with Section 2885 of S.4049, which would expand access to nominal leases on military installations for banks and require the Department of Defense (DoD) to treat banks and credit unions on military installations the same when it comes to leases. The House-passed version of the NDAA, H.R.6395, contains no such provision. As you work to resolve the differences between the two bills, we urge you to strike Section 2885 of S.4049 from the final version of the NDAA.

As you know, through a years-long series of discussions with the DoD, months of debate and several hearings before Congress, an amendment to the *Federal Credit Union Act* (FCU Act) was passed as part of the *Financial Services Regulatory Relief Act of 2006* (P.L. 109-351) to clarify that DoD has the discretionary authority to lease space on military bases at a nominal rate to credit unions provided that they meet certain statutory and regulatory requirements regarding the provision of financial services in the on-base facility (12 U.S.C. § 1770). It is important to note that while DoD has chosen to afford space on military bases at a nominal rate to credit unions,

they are not required to do so. DoD, like many others, recognizes the value that credit unions bring to our men and women in uniform, in good times and bad. For example, during the partial government shutdown last year, many credit unions offered programs to assist those impacted by a lack of a paycheck, while other financial institutions did little or nothing.

Section 2885 of S.4049 would require the DoD to treat large mega-banks, such as Wells Fargo, the same as a military installation's local not-for-profit defense credit union when it comes to rent on military bases. While we recognize the important role both credit unions and banks can play for our men and women in the military in the provision of traditional financial services, the fact remains that banks and credit unions are fundamentally different. For-profit banks ultimately focus on benefitting shareholders while credit unions focus on serving their member-owners.

It is important to point out that although bankers claim that they are required to pay rent on military bases at a fair market value cost, the reality is that banks also already have an avenue to pursue nominal cost leases via 10 U.S.C. § 2667. The *Floyd D. Spence National Defense Authorization Act For Fiscal Year 2001* (P.L. 106-398) gave DoD the authority to accept "in-kind consideration" for leases on military property, including "provision of such other services relating to activities that will occur on the leased property that the Secretary concerned considers appropriate." If military banks were to work with DoD, in-kind consideration could be accepted with respect to a bank lease. Prior to the enactment of the aforementioned amendment to the FCU Act, credit unions also pursued nominal leases via this same provision in 10 U.S.C. § 2667. We would encourage military banks to work with DoD to make better use of this current provision and we urge you to reject this Senate provision in conference.

BSA/AML/Beneficial Ownership Reform

We would also like to express our support for Division F, the *Corporate Transparency Act of 2019* and Division G, the *COUNTER Act of 2019*, of H.R.6395, which would make critical improvements to our *Bank Secrecy Act* (BSA)/anti-money laundering (AML)/beneficial ownership regime. As we shared when the House considered and passed this legislation in October 2019, credit unions strongly support efforts to combat criminal activity in the financial system. NAFCU has consistently recognized the importance of the Financial Crimes Enforcement Network (FinCEN), BSA, and AML/countering the financing of terrorism (CFT) requirements in assisting in the prevention of tax evasion, money laundering and terrorist financing. Our members have a good working relationship with FinCEN, and they consistently inform us that the publication of periodic BSA/AML guidance is very helpful. However, BSA/AML requirements remain a burden to implement, and we believe that the system is in need of improvements and reform.

Division F, the *Corporate Transparency Act of 2019*, would help financial institutions, including credit unions, comply with the Customer Due Diligence (CDD) Rule by requiring companies to disclose their true "beneficial owners" to FinCEN for the creation of a database of beneficial ownership information that would be available to law enforcement agencies and financial institutions. As you know, the CDD rule has been highly burdensome for small financial institutions to implement, and the creation of this database would be enormously helpful for compliance purposes. Even more importantly, criminal actors frequently conceal their identities through anonymous shell companies, and as one of the few developed countries to not maintain a

registry of beneficial ownership information, the United States has become a haven for these types of corporate entities. It is critical that you act now to establish a beneficial ownership database so we can address this illicit activity.

Furthermore, Division G, the *COUNTER Act of 2019*, would make critical modernizations and improvements to our BSA/AML system. The legislation takes many steps that NAFCU strongly supports, including: having FinCEN encourage more coordination between law enforcement and credit union examiners on BSA/AML priorities; directing FinCEN to study and design a modified Suspicious Activity Report (SAR) that would reduce compliance burdens on financial institutions; modernizing the Currency Transaction Report (CTR) threshold by indexing it for inflation; encouraging innovation and providing exemptive relief to facilitate the testing of new technologies and innovations; and increasing information sharing and allowing the sharing of compliance resources in this area. Overall, the legislation is an important step to improve the BSA/AML regulatory compliance regime for law enforcement and community institutions such as credit unions, and it merits inclusion in the final version of NDAA.

Pandemic Relief

Second, as you resume negotiations on a Phase 4 COVID-19 relief package, we ask that you keep in mind credit unions and the 122 million Americans they serve. As you know, credit unions have been on the frontlines working with their members during these times of economic uncertainty. 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. However, there are a number of areas that we believe must be addressed by Congress and the Administration in Phase 4 relief legislation to ensure that credit unions have the necessary tools to support their members through this crisis.

Paycheck Protection Program (PPP)

As you know, credit unions have stepped up to ensure small businesses in their communities are taken care of during these uncertain times, and their response through the PPP has been tremendous. NAFCU believes it is important to simplify the loan forgiveness process and application for smaller PPP loans. While credit unions are working with their members to assist them with the current loan form, the complexity of the forgiveness rules and application is posing challenges for many small businesses who may not have the staff or expertise for such a complex application, especially with the current economic challenges. As such, NAFCU is supportive of a simplified loan forgiveness process for PPP loans under a \$150,000 threshold, such as proposed in H.R.7777/S.4117, the *Paycheck Protection Small Business Forgiveness Act*, and we urge you to add this language to any final pandemic relief legislation.

We also support a second round of PPP loans to the hardest hit small businesses. NAFCU members report that many of their small business members in hard hit sectors and locales need additional support to weather the pandemic. If Congress does authorize a second round of PPP lending, we urge you to include set asides for distribution of PPP funds by community financial institutions, which we believe is crucial to ensure all small businesses are served.

Extension of CARES Act Relief Provisions

We urge you to extend the changes to the National Credit Union Administration's (NCUA) Central Liquidity Facility (CLF) that were enacted in section 4016 of the CARES Act and to extend the provisions from section 4013 of the CARES Act dealing with Troubled Debt Restructuring (TDR). The CLF is an important liquidity tool for credit unions, and the recovery ahead will likely extend beyond the end of 2020, when the changes are currently set to expire. NAFCU believes strong liquidity is vital to ensuring loans to struggling families and small businesses continue to flow within the credit union system. An extension of this provision through the end of 2021 is included in H.R.6789/S.3676, the *Access to Credit for Small Businesses Impacted by the COVID-19 Crisis Act of 2020*. Furthermore, NAFCU appreciates the provisions in section 4013 of the CARES Act giving the NCUA broad authority to suspend Generally Accepted Accounting Principles (GAAP) requirements with respect to loan modifications related to COVID-19 that would otherwise be categorized as TDRs. We urge extension of this flexibility to at least December 31, 2021 to allow any post-forbearance workouts to be included in the applicable period. NAFCU also supports H.R.7913, the *Financial Institution Forbearance Act*. This legislation, proposed by House Financial Services Committee Member Blaine Luetkemeyer, R-Mo., extends and expands the TDR relief provisions put into effect by the CARES Act.

Economic Injury Disaster Loan (EIDL) Advance Forgiveness

As you are aware, SBA EIDL advances provided businesses with a grant of up to \$10,000 to help them survive the sudden revenue shock due to COVID-19. With the tremendous uncertainty during the early days of the pandemic, many small businesses applied for both an EIDL advance and PPP loan, uncertain if they would receive either one. Lenders processing PPP applications were often unaware that the small business sought or received an EIDL advance. Moreover, small businesses relied on early SBA guidance that indicated EIDL advances would be treated as grants. However, later guidance made clear that if a borrower receives an EIDL advance and PPP loan, the amount of the advance must be reduced from the loan forgiveness amount. As small businesses apply for PPP loan forgiveness, many have been shocked to learn about this unexpected debt burden. For small businesses, this debt burden is both shocking and a devastating blow at a time when they are already struggling to survive. For lenders such as credit unions, who were often unaware of a business's EIDL advance when underwriting a PPP loan, this means an unexpected burden on their balance sheets, which ties up capital that could be better used to serve their communities. We urge you to act swiftly to address this issue and exclude EIDL advances from the PPP forgiveness calculation, as proposed by bipartisan legislation in the House, HR.8361, the *EIDL Forgiveness Act*.

Allow Credit Unions to Do More to Help Small Businesses

Looking ahead, most experts agree that the economic impact of COVID-19 and the credit needs of small businesses will be with us beyond the short-term bridge provided by the PPP. While increasing the scope of other Small Business Administration (SBA) programs will help with the recovery, we need to ensure that small businesses have access to as many potential sources of capital as possible. With that in mind, NAFCU supports legislation, H.R.6789/S.3676, the *Access to Credit for Small Businesses Impacted by the COVID-19 Crisis Act of 2020*, which would provide temporary relief from the credit union member business lending (MBL) cap for loans to

help small businesses recover from the COVID-19 crisis. We urge you to include this legislation in the next coronavirus relief package.

Provide Emergency Funding for CDFIs and the CDRLF

The Community Development Financial Institutions (CDFI) Fund and the NCUA's Community Development Revolving Loan Fund (CDRLF) are important tools for credit unions helping underserved and lower-income communities. These programs can assist CDFI-certified and low-income designated credit unions in establishing specific programs to assist the most financially vulnerable consumers and ensure their own resiliency and survival during our current economic and public health emergency. NAFCU urges Congress to increase funding for the CDFI and CDRLF programs. Providing \$1 billion in emergency funding for the CDFI Fund would allow more credit unions to access monies for specific programs to help members who need it most. NAFCU appreciates that this funding was included in the House's Phase 4 relief bill, the *Health and Economic Recovery Omnibus Emergency Solutions Act* (HEROES Act), and that 37 Senators signed a letter urging this level of funding. At the very least, we urge you to support increased funding for the CDFI Fund and CDRLF compared to FY 2020 levels as part of the FY 2021 appropriations process. We would also urge you to consider measures to make it easier for credit unions to become a CDFI.

Modernize the E-SIGN Act

The *Electronic Signatures in Global and National Commerce Act* (E-SIGN Act) was passed nearly 20 years ago and generally allows electronic signatures and documents to carry the same legal weight as hard copy or paper documents. At a time when social distancing has become paramount to the health and safety of credit union members, employees, and their families, credit unions are discovering that some of the E-SIGN Act's outdated provisions have become a burden. Over 90 percent of NAFCU members responding to a survey noted challenges in getting documents signed in light of the pandemic. We urge inclusion of S.4159, the *E-SIGN Modernization Act of 2020*, in the relief package.

Current Expected Credit Loss (CECL) Relief

Credit unions remain well-capitalized as an industry and stand ready to help in the economic recovery. However, new accounting requirements could stymie these efforts. Even though the Financial Accounting Standards Board (FASB) has delayed its new CECL standard for credit unions until the first quarter of 2023, credit unions will have to start bringing their portfolios in line in 2021 and 2022. The temporary relief for 2020 provided in section 4014 of the CARES Act is a good first step. Still, CECL will remain a burden on credit unions as the economy recovers. This could cause constraints on lending and delay our nation's economic recovery. NAFCU believes that credit unions, as not-for-profit cooperative institutions, should not be subject to the CECL standard as they did not engage in the irresponsible practices that precipitated the Great Recession. If credit unions are not exempted, further delaying implementation of this standard could help provide additional clarity and relief for credit unions. We would note that NCUA Board Chairman Rodney Hood called for a credit union exemption to the CECL Standard in an April 30, 2020 letter to FASB, stating that "...the compliance costs associated with implementing CECL overwhelmingly exceed the benefits."

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Capital and Prompt Corrective Action Flexibility

Section 4012 of the CARES Act provided banking regulators with the authority to temporarily lower the Community Bank Leverage Ratio (CBLR) from nine percent to eight percent. Before the pandemic, the NCUA Board had expressed interest in adopting an analog to the CBLR in conjunction with its risk-based capital rule; however, the more immediate constraint on credit union capital takes the form of statutorily prescribed net worth levels under the FCU Act's prompt corrective action (PCA) provisions. In his April 29, 2020 letter to Senate Banking Committee Chairman Mike Crapo, R-Idaho, NCUA Board Chairman Rodney Hood requested temporary capital flexibility for the NCUA and credit unions. Specifically, he asked for "a reduction in the level at which credit unions are considered well capitalized from a net-worth ratio of seven percent to six percent and adequately capitalized from six percent to five percent during the pandemic."

Finally, it is important that any final relief measure does not harm the ability of credit unions to continue to serve their members. We would urge Congress to reject any idea, even if well-meaning, that could place new hardships on credit unions and hamper their ability to help members get access to credit. Enacting provisions now that harm community financial institutions could exacerbate the current health and economic crisis.

We thank you for the opportunity to share our thoughts and look forward to continuing to work with you this Congress on the NDAA, pandemic relief and economic recovery. Should you have any questions or require any additional information, please contact me or Sarah Jacobs, NAFCU's Associate Director of Legislative Affairs, at (571) 289-7550 or sjacobs@nafcuhq.org.

Sincerely,



Brad Thaler
Vice President of Legislative Affairs

cc: Members of the United States Senate
Members of the United States House of Representatives