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National Association of Federally-Insured Credit Unions

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The Honorable Kathleen Kraninger
Director
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552

RE: Priorities of our Nation's Credit Unions

Dear Director Kraninger:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I would like to share with you the top tenets and priorities of our nation's credit unions. Member-owned not-for-profit credit unions provide over 114 million Americans with personal and small business financial service products as the economy continues to recover from the financial crisis. Each year, the NAFCU Board, made up of credit union CEOs from across the nation, identifies the top issues in the upcoming year that impact credit unions.

Below, NAFCU outlines these general priorities, which touch upon both legislative and regulatory concerns, followed by a more detailed discussion of the priorities that specifically concern the Bureau of Consumer Financial Protection (Bureau). We hope that you will work with us to address these top legislative and regulatory issues for credit unions.

- 1. NAFCU supports a regulatory environment that allows credit unions to grow.** NAFCU believes that there must be a regulatory environment that neither stifles innovation nor discourages credit unions from providing consumers and small businesses with access to credit. Promoting growth-friendly regulation includes protecting the current tax status of credit unions. It also includes the ability of credit unions to establish healthy fields of membership that are not limited by outdated laws or regulatory red tape. Revised regulations may also be necessary to address structural barriers to growth. For example, credit unions need modernized capital standards that reflect the realities of the 21st century financial marketplace, such as the ability to issue supplemental capital. Additionally, there must be a housing finance system that works for credit unions.
- 2. NAFCU supports appropriate, tailored regulation for credit unions and relief from growing regulatory burdens.** Credit unions are swamped by unabated regulatory burden from the Bureau and other regulatory entities, often from rules that are targeting bad actors and not community institutions. NAFCU supports the adoption of cost-benefit analysis in the rulemaking process to ensure that positive regulations may be easily implemented and negative

ones may be quickly eliminated. NAFCU also believes that enforcement orders from regulators should not take the place of regulation or agency guidance to provide clear rules of the road. This includes seeking regulatory relief and reform that allows credit unions to better serve their members.

3. **NAFCU supports a fair 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. NAFCU wants to ensure that all similarly situated depositories and lenders follow the same rules of the road and unregulated entities, such as predatory payday lenders, do not escape oversight. We also believe that there should be a federal regulatory structure for non-bank financial services market players that do not have a prudential regulator, including emerging fintech companies. Additionally, retailers and others who handle personal financial information should be held responsible for protecting that information. Retailers should also pay their share for costs associated with data breaches and for access to a reliable and secure national payments system.
4. **NAFCU supports government transparency and accountability.** NAFCU believes regulators need to be transparent in their actions, with the opportunity for public input, and should respect possible different viewpoints. We believe a bipartisan commission is the best form of regulatory governance structure for independent agencies, and all stakeholders should be able to provide feedback in the regulatory process.
5. **NAFCU supports a strong, independent NCUA as the primary regulator for credit unions.** NAFCU believes that the NCUA is the sole regulator equipped with the requisite knowledge and expertise to regulate credit unions due to their unique nature. The current structure of the National Credit Union Administration (NCUA), including a three-person board, has a track record of success. The NCUA should be the sole regulator for credit unions and work with other regulators on joint rulemaking when appropriate. Congress should make sure that the NCUA has the tools and powers that it needs to effectively regulate the industry.

Bureau-Specific Priorities

Bureau Exemption Authority

The *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act) specifically grants the Bureau with the authority to exempt "any class of covered persons" from any provision or rule. NAFCU will continue to urge the Bureau to use its exemption authority more effectively to exclude credit unions from onerous, one-size-fits-all rulemakings and will seek greater legislative exemptions and relief for credit unions from such burdensome Bureau rules.

Unfair, Deceptive, or Abusive Acts and Practices (UDAAP)

Since the enactment of the Dodd-Frank Act, NAFCU has asked for clear, transparent guidance from the Bureau on its expectations for credit unions under the law. The Bureau's exercise of its UDAAP authority has had a chilling effect on credit unions' product and service offerings and has

raised compliance costs. Significant resources are necessary to monitor and track the Bureau's consent orders in order to determine how best to design or modify internal practices, policies, and procedures to avoid a UDAAP violation. NAFCU members reported a 644 percent increase in compliance expenses since 2010 related to UDAAP, according to the 2018 NAFCU Federal Reserve Meeting Survey.

NAFCU strongly supports a UDAAP rulemaking and/or guidance — articulating clear supervisory expectations — as it is necessary to ensure credit unions have the information they need to ensure their operations are safe, sound, and reflective of the spirit and letter of the laws governing them. NAFCU is encouraged by the Bureau's recent decision to consider a potential rulemaking to clarify the “abusive” prong of the UDAAP standard. Additionally, NAFCU asks that the Bureau work closely with the NCUA to resolve questions regarding whether certain credit union powers conferred by the *Federal Credit Union Act* (FCU Act) may be subject to the Bureau's UDAAP authority.

Regulation of Fintech Companies

The growth of online marketplace lenders underlines the need for Congress and regulators to modernize existing laws and regulations for traditional financial institutions to facilitate greater access to credit (such as improvements to E-SIGN). Financial regulators must require online marketplace lenders to meet basic consumer protections such as the *Truth in Lending Act* (TILA), *Bank Secrecy Act* (BSA)/Anti-Money Laundering (AML) requirements, underwriting standards for loans, applicable state usury laws, and others. In addition, NAFCU believes that Congress and regulators should address supervisory gaps that may result in poor oversight of non-bank financial companies, who many not be subject to regular examinations. As cybersecurity risks continue to evolve, and the market for financial products and services becomes increasingly digital, it is imperative that companies handling member information are all held to appropriate data security standards. NAFCU will continue to advocate for a level playing field.

Payday Lending

NAFCU has long sought to facilitate access to short-term, small-dollar lending options that meet the credit needs of credit union members. Credit unions are uniquely positioned to offer safe and affordable lending options to their members, and encouraging such lending should be a priority for the NCUA. Accordingly, NAFCU requests that the Bureau exempt new iterations of the NCUA's payday alternative loan (PAL) program from the Bureau's payday lending rule. Under the Bureau's current rule, PAL I loans receive a safe harbor exemption; however, this exemption relies upon a cross-reference to the NCUA's current regulation for PAL I loans, so the NCUA's ability to propose new PAL loans that are eligible for the safe harbor is limited. The NCUA's recently proposed rule for PALs II may fall within the Bureau's alternative loan exemption so long as the loans satisfy certain conditions and requirements. Unfortunately, the proposed PALs III and any future iterations will not fall into any exemption category, which may inhibit credit union small-dollar lending. NAFCU understands that unscrupulous payday lenders require appropriate supervision, but is committed to working with the Bureau to exempt all future PAL programs from its payday lending rule.

Bureau Reform

NAFCU was the only credit union trade association to demand that credit unions be exempt from the Dodd-Frank Act during the debate on financial reform. Unfortunately, our concerns have proved true, as over 20% of the industry has disappeared since the enactment of the Dodd-Frank Act, with regulatory burden being the prime reason. NAFCU will continue to push for structural changes to the Bureau, such as shifting from the current single director structure to a bipartisan commission. We also support increased accountability for the Bureau by making it subject to the Congressional appropriations process.

NAFCU will also continue to advocate for all credit unions, regardless of asset size, to be exempt from the Bureau's supervisory and enforcement authority. NCUA Chairman McWatters has, on several occasions, written to the Bureau requesting that it exempt federally insured credit unions (FICUs) with assets over \$10 billion from the examination and enforcement provisions of section 1025 of the Dodd-Frank Act. As the prudential regulator of FICUs, the NCUA possesses and is able to bring to bear a broader arsenal of enforcement tools than those available to the Bureau when dealing with problem credit unions. Under the proposed exemption, all FICUs would continue to be subject to consumer financial protection laws and applicable Bureau regulations. NAFCU believes Chairman McWatters's request has merit and should be examined further.

Deferring to the NCUA is particularly important for issues that pose a large reputational risk for credit unions. For example, NAFCU urges the Bureau to reform its consumer complaint database and cease publication of unverifiable consumer complaint data. Although NAFCU believes that all credit unions should be exempt from the Bureau's supervisory and enforcement authority, the Bureau can, as a first step, direct all consumer complaints to credit unions' primary regulator, the NCUA. Credit unions would also benefit from a faster process for routing consumer complaints to the NCUA because they have a vested interest in ensuring that member complaints are handled in an efficient and timely manner. Even though few credit unions are subject to the Bureau's supervisory authority and are therefore included in the complaint database, the database poses too great of a reputational risk and may be a source of misinformation. Unverified complaints should not be publicized, particularly given that publication is not statutorily mandated, and alternative channels exist for consumers to provide commentary and feedback.

Conclusion

Thank you for your consideration and attention to these important matters. We look forward to working with you to address these priorities. If we can answer any questions or provide you with additional information on any of these issues, please do not hesitate to contact me.

Sincerely,



B. Dan Berger
President and CEO