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National Association of Federally-Insured Credit Unions

December 3, 2019

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

RE: Tomorrow's Hearing on Oversight of Prudential Regulators

Dear Chairwoman Waters and Ranking Member McHenry:

I am writing on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) to share our thoughts ahead of tomorrow's hearing entitled "Oversight of Prudential Regulators: Ensuring the Safety, Soundness, Diversity, and Accountability of Depository Institutions?." NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 118 million consumers with personal and small business financial service products. NAFCU and our members welcome the Committee's oversight of financial regulators.

Since the financial crisis, the credit union industry has lost over 1,500 institutions. This dramatic consolidation is due, in large part, to increased regulatory compliance requirements. We urge you to continue to work to create a regulatory environment where credit unions can grow and thrive. As we have previously communicated to you, NAFCU supports the following five tenets of a healthy regulatory environment:

- **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 It also includes the ability of credit unions to establish healthy fields of membership that are not limited by outdated laws or regulatory red tape. All credit unions should have the ability to add underserved areas to their fields of membership. 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.

- **NAFCU supports appropriate, tailored regulation for credit unions and relief from growing regulatory burdens**. Credit unions are swamped by unabated regulatory burden from the Consumer Financial Protection Bureau (CFPB) 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 NAFCU priority includes seeking regulatory relief and reform that allows credit unions to better serve their members. This includes changes to modernize the Federal Credit Union Act, such as giving the National Credit Union Administration (NCUA) authority and flexibility to set longer loan maturity limits, improving credit union investment options, and updating outdated statutory credit union governance provisions found in the Act, including the ability for credit unions to deal with threats to the institution in a timely manner.

- **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.

- **NAFCU supports government transparency and accountability.** NAFCU believes that 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.

- **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 NCUA, including a three-person board, has a track record of success. The NCUA should be the sole regulator for credit unions and continue to work with other regulators on joint rulemaking and other initiatives when appropriate. Congress should make sure that the NCUA has the tools and powers that it needs to effectively regulate credit unions. However, NAFCU does not support the NCUA expanding its regulatory and examination authority beyond credit unions. We believe the NCUA should focus its resources on regulating and examining credit unions, rather than non-credit union third parties where it may not have the expertise or where there may be duplicative regulatory efforts.

In addition to these five tenets of a healthy regulatory environment, NAFCU would like to emphasize several challenging regulatory issues that we hope Chairman Hood and the NCUA Board will address:

- **Exam Modernization:** NAFCU generally supports the NCUA's commitment to modernizing its examination process so long as it reduces burdens on credit unions. Considering that credit unions continue to struggle with procedural inconsistencies and other exam-related issues, NAFCU advocates that the NCUA should prioritize its examination modernization initiatives to standardize examinations and relieve burdens, including the Flexible Examination Pilot Program (FLEX) or offsite examination procedures and the Virtual Examination Program. In particular, NAFCU urges the NCUA to use its authority to expand eligibility for an extended 18-month exam cycle for all well-run, low-risk credit unions. Banks already have increased access to extended exam cycles as authorized by Congress through the Economic Growth, Regulatory Relief, and Consumer Protection Act last year. NAFCU is pleased to see advancements in the implementation of the Enterprise Solution Modernization (ESM) program, which includes the replacement of the Automated Integrated Regulatory Examination System (AIRES) with the new Modern Examination and Risk Identification Tool (MERIT) system. Successful deployment of this new platform could provide cost savings for both credit unions and examiners. NAFCU supports the modernization of the agency's legacy AIRES system with a new platform capable of sharing data in real-time. This new platform could provide substantial efficiencies and help to facilitate more virtual examinations. However, NAFCU asks the NCUA to balance enhanced monitoring with respect for credit union autonomy – increased communication between examiners and credit union management to support virtual supervision should not interfere with day-to-day operations. We hope to see the agency leverage advancements in technology to reduce the length of exams, improve consistency, and reduce the overall burden on credit unions.

- **Risk-Based Capital (RBC) Rule:** NAFCU and its member credit unions support a fair capital system for all federally-insured credit unions that both provides true risk-based capital and access to supplemental capital. In October 2015, the NCUA adopted the RBC rule for federally insured, natural-person credit unions to create a two-tier risk-based capital system. The rule made significant changes to the NCUA's capital adequacy rules and was to take effect on January 1, 2019. In October 2018, the NCUA finalized a rule amending its 2015 RBC rule to delay the implementation date by one year to January 1, 2020 and increase the threshold level for coverage under the RBC requirements from $100 million to $500 million by amending the definition of a "complex" credit union. In June 2019, the NCUA proposed to delay the effective date of both the 2015 and 2018 final rules until January 1, 2022 to allow the agency more time to consider whether to: (1) develop regulatory and supervisory standards to address asset securitization; (2) propose and finalize a rule to allow certain forms of subordinated debt to qualify as capital for RBC purposes; and (3) integrate the equivalent of a community bank leverage ratio (CBLR) into the NCUA's capital standards. NAFCU urges the NCUA to finalize this delay and to permanently grandfather "excluded goodwill" and "excluded other intangible assets" in the RBC calculation. In summary, in any RBC regime, NAFCU has one key tenet that needs to exist: capital must be sufficient to protect the institution, but not so restrictive as to provide a competitive disadvantage or curtail lending.

- **Current Expected Credit Loss (CECL) Standard:** The Financial Accounting Standards Board's (FASB) CECL standard remains a major concern for credit unions. The CECL standard is the most significant change in accounting rules to hit the financial services industry in decades. NAFCU believes that there is a fundamental misalignment between FASB's objectives in developing the CECL standard and the credit union industry. As not-for-profit member-owned cooperatives, credit unions stand to be severely disadvantaged by this new standard and could be forced to curtail certain types of lending because of this standard. NAFCU has urged FASB to reconsider its approach to this proposal and provide an exemption for credit unions because the credit union industry was not responsible for the market conditions that caused the financial crisis. NAFCU appreciates FASB delaying implementation of the standard until 2023 for not-for-profits, including credit unions, but a delay is not enough. We ask the Committee to work with regulators such as the NCUA to come up with solution so that credit unions and their 118 million members are not harmed by, and have the resources necessary to understand, this new standard.

Finally, NAFCU asks the Committee to support several bipartisan pieces of legislation that are consistent with NAFCU's five tenets of a healthy regulatory environment and would help credit unions to better serve American consumers:

- **H.R. 1661, legislation to provide the NCUA Board flexibility to increase loan maturities.** The Federal Credit Union Act has a general statutory limit on federal credit union loans of 15 years, with a limited number of exceptions, such as mortgage loans for a primary residence. However, the Act does not have as much explicit flexibility for other types of loans and the NCUA's ability to address this through regulation may be limited. For example, many military members may purchase a home to move to when their service ends, but because it is not their current primary residence, they may be unable to obtain a loan with a term longer than 15 years. The current 15-year limit is outdated and does not conform to maturities that are commonly accepted in the market today. Language to raise the credit union general loan maturity limit from 12 to 15 years and to provide the NCUA greater flexibility to address loan maturity limits passed the House in 2006, as part of the efforts that led to P.L. 109-351, the Financial Services Regulatory Relief Act of 2006. However, the final version of the legislation only raised the limit to 15 years and did not include the language providing greater flexibility for the NCUA Board. In a rising interest rate environment, it is important that consumers have options for longer maturity products. Representatives Lee Zeldin (R-NY) and Vincente Gonzalez (D-TX) introduced H.R. 1661 on March 8, 2019, which mirrors the additional language that passed the House in 2006, and would clarify the NCUA Board's ability to establish longer maturities for other types of loans. The language does not extend any maturity limits on its own, rather just gives the NCUA Board the ability to do so if it deems necessary.

- **H.R. 2305, Veterans Members Business Loan Act.** Under the Federal Credit Union Act, a credit union's aggregate member business lending (MBL) is effectively capped at 12.25% of assets. Although credit unions have the capital to help small businesses thrive, credit unions' ability to help stimulate the economy is frustrated by the outdated MBL cap. This bipartisan bill offered by Representatives Vicente Gonzalez (D-TX), Paul Cook (R-CA), Tulsi Gabbard (D-HI) and Don Young (R-AK) would exclude loans made to veterans from the statutory credit union MBL cap, thus improving veterans' access to necessary capital by removing regulatory barriers that hinder credit unions' ability to meet the financial needs of our nation's veterans.

- **Legislation to allow all credit unions to add underserved areas to their fields of membership.** Currently, only credit unions with multiple-group charters are able to add underserved areas to their fields of membership. NAFCU supports legislation that would allow other types of credit unions to seek the NCUA Board's approval to add such areas. Although this legislation has yet to be introduced this Congress, it was introduced last Congress as H.R. 4665, the Financial Services for the Underserved Act, by Representatives Gwen Moore (D-WI) and Paul Cook (R-CA).

In conclusion, we thank you for your leadership and ongoing oversight of prudential regulators. NAFCU is pleased to see the Committee examining ways to continue regular oversight. We urge you to also continue to consider additional measures that will help credit unions to better serve their members. We appreciate the opportunity to share our input and look forward to continuing to work with the Committee to balance minimizing regulatory burden with enhancing the safety and soundness of the credit union system. Should you have any questions or require any additional information, please contact me or Sarah Jacobs, NAFCU's Associate Director of Legislative Affairs, at 703-842-2231.

Sincerely,

Brad Thaler

Brad Thaler
Vice President of Legislative Affairs

cc: Members of the House Financial Services Committee