



3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
f: 703.524.1082
nafcu@nafcu.org | nafcu.org

National Association of Federally-Insured Credit Unions

February 7, 2023

The Honorable Andy Barr
Chairman
Subcommittee on Financial Institutions &
Monetary Policy
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Bill Foster
Ranking Member
Subcommittee on Financial Institutions &
Monetary Policy
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Re: Tomorrow's Hearing: "Revamping and Revitalizing Banking for the 21st Century"

Dear Chairman Barr and Ranking Member Foster:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) to share our thoughts on issues of importance to credit unions ahead of tomorrow's hearing, "Revamping and Revitalizing Banking for the 21st Century." NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 135 million consumers with personal and small business financial service products. We would like to thank you for this opportunity to provide input on areas of financial services regulation that need updating to help credit unions continue to serve their members and communities.

Regarding the legislation noticed for this hearing, NAFCU would like to offer the following thoughts:

The Financial Data Privacy Bill

After action in the House Energy and Commerce Committee last year, we are pleased to see the House Financial Services Committee engage on this topic from the financial services industry perspective. As the Committee considers privacy legislation and ways to improve data protection, we would like to re-iterate [NAFCU's Principles for a Federal Data Privacy Standard](#) to ensure credit unions are not placed under duplicative regulatory frameworks. NAFCU has long advocated for a national data privacy standard that includes cybersecurity standards for all entities that collect and store consumer information, including merchants, retailers, and fintech companies. The standards of the Safeguards Rule under the Gramm-Leach-Bliley Act are robust, but they only apply to financial institutions. We caution the Subcommittee to be wary of any efforts to expand private rights of action when it comes to data privacy. Additionally, any legislation should ensure that a financial institution's primary regulator – in the case of credit unions, the National Credit Union Administration (NCUA) – is the sole enforcer to prevent regulator overlap in areas they are not versed in. We look forward to continuing to work with the Committee as updated drafts of this bill emerge.

The Bank Service Company Examination Coordination Act

NAFCU would like to take this opportunity to note that we remain opposed to calls for the NCUA to have the authority to examine third-party vendors. The NCUA has not explained in sufficient detail the need for such authority, as these vendors are already examined by other regulators and the NCUA has access to information regarding them through the Financial Stability Oversight Council upon which it sits. Additionally, since the NCUA is funded by its member credit unions, the costs of this new authority would be borne by the credit unions themselves. As you consider issues such as this, including the NCUA in requirements for data sharing between regulators could be one step to ensure the NCUA has the information it wants without placing an undue burden on credit unions by granting the agency expanded and costly authorities.

The Promoting Access to Capital in Underbanked Communities Act and the Promoting New and Diverse Depository Institutions Act

NAFCU is pleased to see this focus on aiding underbanked and underserved communities as part of this hearing. We would note that credit unions have long been a critical provider of financial services to rural and underserved areas. As large and community banks have been shutting down branches and moving out of these areas, credit unions have been stepping up and expanding their presence to fill the void as they are able. In 2019, the Federal Reserve published a study detailing the dramatic decline in bank branches in rural areas. The study showed that 7 percent of rural bank branches were closed between the years 2012 and 2017 and that number grew to 11 percent through 2019. Losses are not only concentrated among large banks, which shuttered 19 percent of their total rural branches, but also among community banks, which lost 5 percent. Credit unions, on the other hand, were the only financial institution type to add branches in both rural and urban areas, demonstrating credit unions' commitment to their members and serving underserved communities. We urge the Subcommittee to include legislation allowing credit unions to add underserved areas to their fields of membership with efforts to help underserved and underbanked communities.

As you look at revamping and revitalizing financial services to meet consumer needs and improve regulation and supervision, we would like to offer additional areas where credit unions would urge the Subcommittee to consider action:

Dodd-Frank and Consumer Financial Protection Bureau Relief

Credit unions and community institutions too often find themselves overburdened by regulatory actions taken by the Consumer Financial Protection Bureau (CFPB). Too often the CFPB seems to ignore provisions specifically included in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to protect community institutions, such as its authority under Section 1022 to provide exemptions to smaller entities and its requirements to hold Small Business Regulatory Enforcement Fairness Act panels for rules that will impact smaller entities. We have seen this recently with its credit card late fee proposal. We urge the Subcommittee to examine not only the actions in this area, but others including:

- *Oversight of Overdraft Protection (ODP) programs:* Credit union ODP programs are often requested as a service by members and are monitored for those who abuse them and need additional help.
- *Section 1071 rulemaking:* Current rulemaking on the small business data collection requirements of Section 1071 of the Dodd-Frank Act risks saddling small institutions with a significant compliance burden.
- *Section 1033 rulemaking:* Section 1033 of the Dodd-Frank Act authorizes the CFPB to make rules around consumers' access to their own data. NAFCU considers the current proposal at the CFPB too broad and likely to impose significant compliance costs on credit unions.
- *Regulation E:* The CFPB is considering extending liability under Regulation E to include fraudulently induced transfers. This is too broad of an interpretation that would harm small credit unions. NAFCU urges the Subcommittee to consider legislative solutions.
- *CFPB Commission:* NAFCU supports any effort to reform the CFPB from having a single director to being led by a bipartisan multi-member commission.
- *Dodd-Frank Act Adjustments:* NAFCU advocates for an inflation adjustment for the thresholds in the Dodd-Frank Act (now over a decade old), which would reset the exemption thresholds and account for the current high inflation environment.

Federal Credit Union Act (FCU Act) Modernization

There are several areas where the FCU Act needs modernization. We were pleased to see quick action in the House on H.R. 582, the Credit Union Board Modernization Act. Still, more needs to be done. For example, the FCU Act sets a 15 percent maximum interest rate that a credit union can charge for its financial products. However, the NCUA Board is also given discretion to set a temporary maximum interest rate for a period of 18 months. Since 1987 the maximum interest rate has been at least 18 percent, and this has been renewed every 18 months. NAFCU advocates that the maximal interest rate be a floating rate of the prime rate plus 15 percent. This would give credit unions more flexibility to adjust policies in response to economic events, such as the inflationary environment we are currently in.

Another area of the FCU Act in need of modernization is investment authorities. Federal credit unions are more limited than other types of institutions and even state-chartered credit unions in where they can invest their funds to earn a return. An increase in deposits on hand during the pandemic, combined with a limited ability to earn a return, presents a series of challenges for federal credit unions. The NCUA has indicated that it is limited in what it can do to offer more investment options for credit unions under the FCU Act. We encourage the Subcommittee to consider legislative action on these issues and allow the NCUA to provide a broader set of investment options for federal credit unions.

Lending Improvements

An important aspect of modernizing the FCU Act is modernizing lending provisions in the Act. Credit unions proved their importance as a source of credit to small businesses during the

The Honorable Andy Barr, The Honorable Bill Foster

February 7, 2023

Page 4 of 4

pandemic. In many cases credit unions were the only source of Paycheck Protection Program loans for small businesses after they had been turned away by banks. Credit unions would like to continue to provide credit to businesses in their communities, however, they are constrained by the member business lending (MBL) cap in the FCU Act. This provision caps the total amount a credit union can lend to businesses at 12.25 percent of deposits, with loans under a de minimis threshold of \$50,000 not counting towards that cap. With the current inflationary environment, this de minimis threshold is out of date and should be increased to allow credit unions to continue to aid businesses in their communities. In addition to raising the MBL cap, we urge the committee to consider legislation expanding the loan maturity limit in the FCU Act. Currently, credit unions are constrained to loans with a maturity limit of 15 years. NAFCU supports legislation that would increase this limit. In the 117th Congress, Representatives Vincente Gonzalez and Brian Fitzpatrick introduced bipartisan legislation, H.R. 5189, that would address both of these important issues. We urge the Subcommittee to take up this legislation in the 118th Congress.

Financial Technology Companies

Any examination of emerging technologies must include the role of fintech. The growth of fintech in recent years offers new opportunities for the delivery of financial services. The use of financial technology can have a positive effect on credit union members. Credit unions embrace innovations in technology to improve relationships with members and offer more convenient and faster access to financial products and services. However, the growth of fintech has presented new threats and challenges as novel entities emerge in an under-regulated environment. As such, NAFCU believes that Congress and regulators must ensure that when technology firms and fintechs compete with regulated financial institutions, they do so on a level playing field where smart regulations and consumer protections apply to all participants. NAFCU has outlined some of the challenges and opportunities in this area in a [white paper](#) that proposes regulatory recommendations for oversight of fintech companies. We urge you to keep these recommendations in mind as you examine emerging technologies.

We thank you for the opportunity to share our thoughts and look forward to continuing to work with you on updating the financial services industry for the 21st century. Should you have any questions or require any additional information, please contact me or Lewis Plush, NAFCU's Senior Associate Director of Legislative Affairs, at (703) 258-4981 or lplush@nafcu.org.

Sincerely,



Brad Thaler

Vice President of Legislative Affairs

cc: Members of the Subcommittee on Financial Institutions and Monetary Policy