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National Association of Federally-Insured Credit Unions

March 5, 2019

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

Re: Legislative Tenets and Priorities of our Nation's Credit Unions

Dear Leader McConnell and Leader Schumer:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I write today to share the top legislative tenets and priorities of our nation's credit unions for the 116th Congress. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 115 million consumers with personal and small business financial service products. 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 and establishes the tenets that are important to the industry. NAFCU outlines these tenets below. We hope that the Senate will work with us to address these top concerns for credit unions in the 116th Congress.

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 It also includes the ability of credit unions to establish healthy fields of membership that are not limited by outdated laws or regulatory red tape.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.

Action items under this priority include, but are not limited to:

Preserving the Credit Union Tax Exemption – The Administration and Congressional leadership remain committed to advancing a second round of tax reforms. Even though no one has singled out the credit union tax exemption for elimination, it is as important as ever to remain vigilant in protecting the credit union tax exemption.

GSE/Housing Finance Reform – Although no consensus legislative proposal has yet emerged, there remains bipartisan interest in addressing this issue. As such, preserving a government guarantee, maintaining unfettered access to the secondary market, and ensuring fair pricing for credit unions based on loan quality will remain a top legislative issue for NAFCU.

Field of Membership (FOM) – Strengthening the federal charter for federal credit unions is at the core of NAFCU's advocacy efforts. NAFCU fundamentally believes the industry's dual chartering system works best when the state and federal charters keep pace with each other. Several states, however, have been much more progressive in modernizing their FOM rules to recognize today's dynamic and ubiquitous marketplace. NAFCU will continue to push for legislative improvements to sections of the *Federal Credit Union Act* (FCU Act) that restrict the ability of credit unions to serve their desired fields of membership, including allowing all credit unions to add underserved areas. NAFCU appreciates National Credit Union Administration (NCUA) Chairman McWatters's support of such a legislative reform and is optimistic that Congress will make changes to help the credit union industry serve those Americans in need of access to financial services.

Capital/Risk-Based Capital (RBC) Reform – NAFCU remains concerned about the impact the NCUA's RBC rulemaking will have on the credit union industry, including regulatory burden and increased costs. NAFCU worked steadfastly to mitigate the impact of a bad rule; as a result, the final rule recalibrates many risk weights to better align with banks' requirements, removes interest rate risk from the calculation of the RBC ratio, and extends the implementation date until 2020. Even though the NCUA has offered a new definition of "complex" credit union that would exclude more credit unions from the RBC rule, NAFCU has urged the agency to consider an approach to complexity that does not strictly rely on an asset-based threshold. NAFCU will continue to advocate for Congress to step in and delay the rule's effective date until 2021 if the NCUA does not revisit and reconsider its approach to RBC.

NAFCU will also continue to advocate for improved access to alternative capital, including both secondary capital, available to only low-income designated credit unions (LICUs), and supplemental capital, which is a proposed form of regulatory capital that would be available to all credit unions. NAFCU supports changes to the secondary capital plan approval process and a streamlined application to help LICUs access capital faster. NAFCU also supports changes to the FCU Act that would permit credit unions to count certain forms of supplemental capital towards the net worth ratio calculation to alleviate current constraints on building net worth.

Telephone Consumer Protection Act (TCPA) – Since the Federal Communications Commission (FCC) issued its problematic 2015 Declaratory Ruling and Order, the risk of facing a lawsuit over inadvertent TCPA violations has kept many credit unions from freely communicating with their members. Recent court decisions invalidating the FCC's 2015 Order and its interpretation of key elements of the TCPA have provided an opportunity for relief from these harmful rules. NAFCU supports a broad definition of "autodialer," an FCC-run database for reassigned numbers, and other reforms to help credit unions contact their members with important information about their existing accounts. NAFCU will continue to work with the FCC and Congress to modernize the TCPA.

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 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.

Action items under this priority include, but are not limited to:

Regulatory Relief – NAFCU encourages you to continue to work on the issue of regulatory relief for credit unions both through Congressional action and by persuading agencies to take action to provide relief where they already have the authority to do so. In the near term, NAFCU will continue to work with regulators to ensure swift implementation of the *Economic Growth, Regulatory Relief and Consumer Protection Act*, which has already provided some relief of burdens on credit unions.

FASB's Current Expected Credit Loss (CECL) Standard – 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 severely curtail certain types of lending because of this standard. NAFCU will fight to have FASB reconsider this proposal from a credit union perspective and seek to have FASB exempt credit unions from this onerous new standard.

Loan Maturities – NAFCU has long advocated for the NCUA to grant credit unions additional flexibility with respect to loan maturity limits. In August 2018, the NCUA issued a proposal inviting comment on extending maturity limits for certain types of loans. NAFCU recognizes that extending the general 15-year maturity limit requires legislative action and continues to urge the NCUA to support any legislative efforts that would amend the general maturity limit. The current 15-year limit is not on par with that of other lenders in the marketplace, and credit unions are at a competitive disadvantage. NAFCU also encourages the NCUA to re-evaluate its definition of "principal residence" to conform with recent amendments to the FCU Act.

Americans with Disabilities Act (ADA) Website Guidance – The ADA did not envision the internet and web-based services, creating an area of legal uncertainty when it comes to compliance with the ADA in regard to website accessibility standards. Recently, there have been a series of demand letters and lawsuits against credit unions that attempt to exploit this area of unsettled law by seeking frivolous financial damages against credit unions. NAFCU recognizes the importance of the ADA and fully supports the ability for all Americans to be free from discrimination, but does not think that this law should be hijacked and abused by bad actors.

NAFCU will continue to fully engage with Congress, the Department of Justice (DOJ) and the courts on this issue and will continue to urge the DOJ to issue clear guidance and Congress to clarify the law on ADA website accessibility standards to help stem the rise of costly lawsuits.

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 CFPB on its expectations for credit unions under the law. NAFCU believes that a UDAAP rulemaking and/or guidance—articulating clear supervisory expectations—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. The CFPB’s exercise of its UDAAP authority has had a chilling effect on credit unions’ product and service offerings.

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.

Action items under this priority include, but are not limited to:

Data/Cyber Security – NAFCU has been working with financial sector stakeholders to enact reforms that create a safer environment and hold retailers accountable, all while not creating burdensome new requirements on financial services. NAFCU will continue to help credit unions deal with the aftermath of data breaches, including supporting efforts to better protect data held by credit bureaus and other non-bank financial companies. NAFCU will also continue to work with others in the financial sector on this key issue while also seeking to increase credit union awareness of cyber threats.

Interchange – NAFCU will continue to push Congress to repeal the failed Durbin amendment and fight against any efforts to expand interchange price caps to credit cards. NAFCU will also continue to press the Federal Reserve Board to lessen the negative burden of the Durbin price caps.

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 may 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 consumer information are all held to appropriate data security standards. NAFCU will continue to advocate for a level playing field.

Oppose Community Reinvestment Act (CRA) Coverage – In April 2018, Treasury issued a list of recommendations to improve the statutory framework of the CRA. As a result of NAFCU’s vigorous efforts to inform both regulators and Congress of the strong role credit unions play in underserved communities, the Treasury recommendations did not seek to extend the scope of the CRA to credit unions. However, in late 2018, legislation was introduced that sought to expand the CRA to include certain credit unions. NAFCU has advocated against this legislation by drawing attention to the historical reasons the CRA was enacted and by educating regulators and lawmakers about the structure and purpose of credit unions. NAFCU will continue to aggressively fight any future efforts to place credit unions within the scope of the CRA.

4. **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.

Action items under this priority include, but are not limited to:

CFPB Improvements – NAFCU was the only credit union trade association to urge 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 percent of the industry has disappeared since its enactment, with regulatory burden being the prime reason. NAFCU will continue to push for structural changes to the CFPB, such as shifting from the current single director structure to a bipartisan commission. We also support increased accountability for the CFPB by making it subject to the Congressional appropriations 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 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.

Actions items under this priority include, but are not limited to:

CFPB Exemption Authority – As mentioned above, 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. We will continue to advocate for all credit unions, regardless of asset size, to be exempt from the CFPB's supervisory and enforcement authority. NCUA Chairman

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McWatters has, on several occasions, written to the CFPB 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 CFPB when dealing with problem credit unions. Under the proposed exemption, all FICUs would continue to be subject to consumer financial protection laws and applicable CFPB regulations. NAFCU believes Chairman McWatters's request has merit and should be examined further.

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 or NAFCU's Associate Director of Legislative Affairs, Alex Gleason, at 703-842-2237.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brad Thaler', with a long horizontal flourish extending to the right.

Brad Thaler
Vice President of Legislative Affairs

cc: Members of the United States Senate