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National Association of Federally-Insured Credit Unions

June 13, 2022

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Re: Tomorrow's Committee Markup

Dear Chairwoman Waters and Ranking Member McHenry:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing to share NAFCU's views on various bills being considered during the upcoming markup in the House Committee on Financial Services. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 130 million consumers with personal and small business financial service products.

H.R. 5912, the *Close the ILC Loophole Act* (Support)

NAFCU supports the bipartisan *Close the ILC Loophole Act*, H.R. 5912, introduced by Representative Chuy Garcia. An industrial loan company (ILC) charter can offer certain nonbank parent companies the opportunity to skirt registration as a bank holding company and avoid consolidated supervision by the Federal Reserve.¹ This reduced oversight is further exacerbated by the fact that the Federal Deposit Insurance Corporation (FDIC) lacks a complete range of statutory authority to fully supervise certain parent companies of ILCs.² As a result, the relationship between a nonbank parent and its ILC subsidiary lacks the degree of transparency and accountability intended by the *Bank Holding Company Act* (BHCA) while at the same time inviting potentially hazardous comingling of banking and commercial activities. In other words, the ILC charter frustrates a core principle of prudential regulation: that a bank's parent company should serve as a transparent source of strength rather than an opaque source of risk. The new draft of the ANS for H.R. 5912 represents a compromise that addresses these concerns, and the concerns of existing ILCs that have been operating in good faith under the law. It is a comprehensive solution to closing the ILC loophole once and for all and we urge its adoption at markup without additional amendments that seek to water down the important strides that the legislation is taking. **Support for H.R. 5912 is a key vote for credit unions.**

¹ Cocheo, Steve, "Fintech Charters Signal a Tectonic Realignment in Banking," July 22, 2020.

² Under Section 10(b)(4) of the FDI Act, the FDIC is permitted to examine any insured depository institution, including an ILC, to examine the affairs of any affiliate, including the parent holding company, "as may be necessary to disclose fully (i) the relationship between the institution and the affiliate; and (ii) to determine the effect of such relationship on the depository institution." 12 U.S.C. § 1820(b)(4). However, this limited grant of authority is no substitute for the full range of examination powers necessary for consolidated supervision.

H.R. 4277, the Overdraft Protection Act (Oppose)

NAFCU and its member credit unions believe in fair, transparent, and competitive markets for consumer financial services. Credit unions remain committed to working to continue improving consumers' understanding of courtesy pay products but caution that any legislative efforts that eliminate overdraft protection programs are likely to have a significant negative impact on borrowers who value these programs. It is inappropriate to intervene in a market where forces are already leading many credit unions and other financial institutions to reduce, limit, or eliminate overdraft and non-sufficient funds (NSF) fees.

Credit union members who choose to use a courtesy pay or overdraft protection program do so willingly and with full disclosure of the program's costs and features. Rules for overdraft programs, originally issued by the Federal Reserve and now under the purview of the Consumer Financial Protection Bureau (CFPB or Bureau), made many services something that consumers must opt in to. This opt-in requirement gives consumers control and the overdraft rule's notice requirements have helped consumers to better understand the cost of overdraft programs.

In 2009, former House Financial Services Committee Chairman Barney Frank (D-MA) even recognized the importance of an opt-in regime and how consumer choice should trump legislation in this area when he said:

*We wouldn't, I believe, be in a situation where we are talking about legislation if you would have had an opt-in regime from the beginning.*³

While the CFPB recently released two reports on the topic, the underlying assumptions about the impact of overdraft fees was flawed and the data the Bureau relied upon was stale—overdraft and NSF programs and the market overall have changed significantly since the time period evaluated in the credit union-specific report. The Bureau recently compared these fees to resort fees, to which they bear no resemblance, and seemingly forgot these programs are subject to federal and state laws and regulations. Consumers affirmatively opt in to overdraft and courtesy pay programs and appreciate the protection they provide. If these programs were removed, this would lead to an increase in declined debit transactions and bounced checks, which would lead to negative credit reports and more consumer harm and confusion.

Credit unions urge lawmakers to keep in mind:

- Surveys done by credit unions of their members have shown that they highly value the protection and peace of mind courtesy pay programs provide and the assurance that their transaction will go through at the point of sale.

³ U.S. Congress, House, Committee on Financial Services, *The Overdraft Protection Act of 2009*, 111th Congress, 1st session, October 30, 2009, p. 5.

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- NAFCU surveys have found that a vast majority of credit unions report offering specialized intervention and financial education for those who frequently use courtesy pay programs, to ensure that consumers are not overly reliant on these programs and are able to improve their financial health.
- Many credit unions already do not assess fees when an account is overdrawn by a *de minimis* amount and some place caps on the total number of NSF fees that can accumulate in a given period.
- A majority of credit unions also report that they routinely waive fees when a member incurred the overdraft on accident and requests a fee waiver.

Recent trends in the market and the growth of new technologies have led to an evolving marketplace and consumer options regarding overdraft protection and courtesy pay programs. NAFCU believes that the best option for policymakers is to let the market for these programs evolve without artificial government intervention to stymie consumer choice. If policymakers are concerned about consumer information, the focus should be on increasing educational resources for consumers and improving consumer disclosures with these programs, not enacting legislation that will severely hamper these programs. It is with these concerns in mind that **we urge the Committee to oppose H.R. 4277**. While the legislation may be well-intentioned, we believe it is the wrong approach to address the market at this time.

Finally, while NAFCU supports fair regulation of third-party debt collectors, we caution that, as the Committee considers H.R. 6814, the *Small Business Fair Debt Collection Protection Act*, you ensure that changes to the *Fair Debt Collection Practices Act* do not improperly hinder the ability of creditors to seek payment of delinquent debt.

Conclusion

Thank you for the opportunity to comment on various measures before the Committee tomorrow. We appreciate your leadership and ongoing focus on issues important to credit unions. We look forward to working with you. Should you have any questions or require any additional information, please do not hesitate to contact me or Jake Plevelich, NAFCU's Associate Director of Legislative Affairs, at jplevelich@nafcu.org.

Sincerely,



Brad Thaler
Vice President of Legislative Affairs

cc: Members of the House Committee on Financial Services