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**National Association of Federally-Insured Credit Unions**

July 16, 2019

The Honorable Frank Pallone, Jr.  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Greg Walden  
Ranking Member  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C. 20515

**Re: Tomorrow's Markup of H.R. 3375, the *Stopping Bad Robocalls Act***

Dear Chairman Pallone and Ranking Member Walden:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) in conjunction with tomorrow's markup of H.R. 3375, the *Stopping Bad Robocalls Act*. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 117 million consumers with personal and small business financial service products. NAFCU and our members appreciate the Committee's collaborative efforts to tailor the bill appropriately to target illegal robocalls, while ensuring consumers still receive wanted, time-sensitive information from their credit unions.

NAFCU supports the Committee's diligent work drafting legislation that protects consumers from unlawful robocalls and provides the Federal Communications Commission (FCC) with reasonable benchmarks to continue its work to prevent and eliminate illegal robocalls and target the bad actors responsible for defrauding consumers. Nevertheless, NAFCU continues to engage the FCC to provide the industry with clarity so that credit unions can contact their members using modern communications technologies without fear of a lawsuit. Uncertainty with the *Telephone Consumer Protection Act* (TCPA) due to the FCC's 2015 Declaratory Ruling and Order has led to increased litigation and confusion for legitimate callers, without achieving Congress's intended result in passing the TCPA – stopping illegal calls made to harass or defraud consumers. Therefore, any TCPA amendment should clearly distinguish between illegal robocalls and legitimate calls made using an automatic telephone dialing system (ATDS or "autodialer").

Considering recent, inconsistent judicial interpretations of what qualifies as an "autodialer," NAFCU supports the requirement in Section 2 of H.R. 3375 that the FCC, within six months of the enactment of this legislation, prescribe regulations to clarify the definition of an ATDS. NAFCU supports a broad definition of "autodialer" that only includes equipment that uses a random or sequential number generator to store or produce numbers and dial those numbers without human intervention. NAFCU also encourages the Committee to engage with the FCC to ensure that such clarifying regulations are promptly issued.

With respect to the FCC's reassigned numbers database, NAFCU supports a comprehensive safe harbor from liability for callers using the database that accidentally place a call to a reassigned

number. As such, NAFCU is concerned that the bill's narrower safe harbor provision could present a risk to credit unions' ability to make legitimate communications to their members. The current safe harbor provision along with Section 4's "called party" definition could expose credit unions to liability even if they have checked the reassigned numbers database and, through no fault of their own, still reach a reassigned number. NAFCU urges the Committee to recognize the distinction between legitimate communications and illegal robocalls through a comprehensive safe harbor that protects both accidental calls as a result of an error in the database and an error on the part of the caller.

NAFCU appreciates the Committee's efforts to resolve the mislabeling of legitimate communications as illegal robocalls by requiring that robocall blocking services "are provided with transparency and effective redress options." However, this provision in Section 8 of the bill could be enhanced by adding a notice requirement for blocked calls so that callers will be notified if their calls have been blocked. Without a specific challenge mechanism and notice requirement, essential and time-sensitive communications (e.g., related to fraud and data breaches) could be significantly delayed or prevented entirely, exposing consumers to increased risks and theft and posing significant reputational risks for credit unions. To prevent such an outcome, NAFCU urges the Committee to include an explicit notification requirement for a caller informing them that their call was blocked.

We appreciate the Committee's continued oversight of the FCC and efforts to reform the TCPA to combat illegal robocalls, while also protecting credit unions' ability to communicate with their members on important issues related to their existing accounts. As the Committee reviews this bill before tomorrow's markup, we would urge you to ensure that efforts to stop illegal robocalls do not impede the ability of credit unions to contact their members for legitimate business purposes.

On behalf of our nation's credit unions and their more than 117 million members, we thank you for your attention to this important matter. Should you have any questions or require any additional information, please contact me or Max Virkus, NAFCU's Associate Director of Legislative Affairs, at [mvirkus@nafcu.org](mailto:mvirkus@nafcu.org) or 703-842-2261.

Sincerely,



Brad Thaler  
Vice President of Legislative Affairs

cc: Members of the House Committee on Energy and Commerce