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

July 19, 2021

The Honorable Nydia Velázquez
Chairwoman
Committee on Small Business
U.S. House of Representatives
Washington, DC 20515

The Honorable Blaine Luetkemeyer
Ranking Member
Committee on Small Business
U.S. House of Representatives
Washington, DC 20515

Re: Tomorrow's Hearing, "Strengthening the Cybersecurity Posture of America's Small Business Community"

Dear Chairwoman Velázquez and Ranking Member Luetkemeyer:

I am writing on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) in conjunction with tomorrow's hearing, "Strengthening the Cybersecurity Posture of America's Small Business Community." As you are aware, NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve nearly 125 million consumers with personal and small business financial service products. We appreciate the committee's attention to the threats small businesses face in the cyber- and data-security space. We thank you for holding this important hearing and applaud your continued leadership on this matter.

Data security is an important part of the cybersecurity discussion and every time a consumer uses a plastic card for payment at a register or makes online payments from their accounts, they unwittingly put themselves at risk. The pandemic has accelerated payment card use, especially at many small businesses. This has led them to have more access to personal financial data than ever before. Cybersecurity is now more important than ever for them, as both merchants and financial institutions are targets of cyberattacks and data thieves.

However, there is not a national data security standard for retailers, as there is for financial institutions, including credit unions. Financial institutions have been subject to standards on data security since the passage of the *Gramm-Leach-Bliley Act* (GLBA) while retailers and many other entities that handle sensitive personal financial data are not subject to these same standards, and they become victims of data breaches and data theft all too often. While cyber- and data-security can be daunting for small businesses, it does not have to be, as standards should be scalable and flexible based on size and risk.

We recognize that finding a legislative solution to cyber- and data-security is a complex issue, and thus have established a set of guiding principles to help define key issues credit unions would like to see addressed in any comprehensive cyber and data security effort that may advance. These principles include:

- **Payment of Breach Costs by Breached Entities:** NAFCU asks that credit union expenditures for breaches resulting from card use be reduced. A reasonable and equitable way of addressing this concern would be to enact legislation to require entities to be

accountable for costs of data breaches that result on their end, especially when their own negligence is to blame.

- **National Standards for Safekeeping Information:** It is critical that sensitive personal information be safeguarded at all stages of transmission. Under the GLBA, credit unions and other depository institutions are required to meet certain criteria for safekeeping consumers' personal information and are held accountable if those criteria are not met through examination and penalties. Unfortunately, there is no comprehensive regulatory structure akin to the GLBA that covers other entities that collect and hold sensitive information. NAFCU strongly supports the passage of legislation requiring any entity responsible for the storage of consumer data to meet standards similar to those imposed on depository institutions under the GLBA.

- **Data Security Policy Disclosure:** Many consumers are unaware of the risks they are exposed to when they provide their personal information. NAFCU believes this problem can be alleviated by simply requiring merchants to post their data security policies at the point of sale if they take sensitive financial data. Such a disclosure requirement would come at little or no cost to the merchant but would provide an important benefit to the public at large.

- **Notification of the Account Servicer:** The account servicer or owner is in the unique position of being able to monitor for suspicious activity and prevent fraudulent transactions before they occur. NAFCU believes that it would make sense to include entities such as financial institutions on the list of those to be informed of any compromised personally identifiable information when associated accounts are involved.

- **Disclosure of Breached Entity:** NAFCU believes that consumers should have the right to know which business entities have been breached. We urge Congress to mandate the disclosure of identities of companies and merchants whose data systems have been violated so consumers are aware of the ones that place their personal information at risk.

- **Enforcement of Prohibition on Data Retention:** NAFCU believes it is imperative to address the violation of existing agreements and law by those that retain payment card information electronically. Many entities do not respect this prohibition and store sensitive personal data in their systems, which can be breached easily in many cases.

- **Burden of Proof in Data Breach Cases:** In line with the responsibility for making consumers whole after they are harmed by a data breach, NAFCU believes that the evidentiary burden of proving a lack of fault should rest with the negligent entity that incurred the breach.

Thank you for your continued interest in enhancing the security of the small business sector and for holding this important hearing. NAFCU urges Congress to come together in a bipartisan way

and put forward legislative recommendations to protect financial institutions and small businesses while ensuring other entities that handle financial data are subject to strong national data security standards.

We thank you for the opportunity to share our perspective on this important topic in advance of this hearing. Should you have any questions or require any additional information, please contact me or Janelle Relfe, NAFCU's Associate Director of Legislative Affairs, at (571) 289-7550.

Sincerely,

Brad Thaler
Vice President of Legislative Affairs

cc: Members of the U.S. House Small Business Committee