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National Association of Federally-Insured Credit Unions

**Greg Mesack**  
Senior Vice President, Government Affairs

July 26, 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 131 million consumers with personal and small business financial service products.

**H.R. 6889, the Credit Union Board Modernization Act (Support)**

NAFCU has sought, and strongly supports, H.R. 6889, overwhelmingly bipartisan legislation to modernize credit union board meeting requirements. Reducing the outdated requirements for credit union boards of directors to meet each month to no fewer than six times per year is a welcome modernization that will give credit unions more flexibility and free up resources that could otherwise be used for serving members. This is particularly true for small credit unions in rural and underserved areas. With all of the connectivity and technology available today, credit union boards are able to communicate in an ongoing manner that has negated the necessity of monthly meetings. **We strongly urge the Committee to support H.R. 6889, the Credit Union Board Modernization Act.**

**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 we 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.<sup>1</sup>*

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 that 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.
- 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

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

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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.

**H.R. 8485, the Expanding Access to Credit through Consumer-Permissioned Data Act**

Many credit unions are very interested in considering alternative data in mortgage lending decisions as they want to expand the credit box as much as possible for underserved communities and first-time homebuyers. However, we are concerned that, as written, H.R. 8485 considers limited information that could potentially result in a cumbersome back and forth between credit unions and their members about what information would and would not be included in a consumer reporting agency report. NAFCU urges the Committee to study this issue further, hear from stakeholders, and require clearer lines to be drawn through regulation, as NAFCU has concerns regarding the lack of clarity. Credit unions value working with their members to get them the products they need but are concerned about requirements that could limit their flexibility in working with members and increase compliance requirements. These include concerns with the notice requirement. The changes to credit unions' processes and systems to include these new forms would be especially frustrating if a credit union is adopting a new underwriting platform or incorporating AI/ML tools because it would have to ensure compliance with these requirements. **NAFCU agrees with the intent of this bill, however, we would urge changes to the current approach before the legislation moves forward.**

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](mailto:jplevelich@nafcu.org).

Sincerely,



Greg Mesack

cc: Members of the House Committee on Financial Services