NAFCU
3138 10th Street North
Arlington, VA 22201-2149
703.842.2215 | 800.336.4644
f: 703.522.2734
dberger@nafcu.org | nafcu.org
National Association of Federally-Insured Credit Unions

B. Dan Berger
President & Chief Executive Officer

September 3, 2020

The Honorable James Comer
Ranking Member
Committee on Oversight and Reform
United States House of Representatives
Washington, DC 20515

Re: Trends in Regulation and Regulatory Reform Request

Dear Ranking Member Comer:

Thank you for your July 23, 2020 letter seeking information on regulatory changes impacting credit unions since the 2008 financial crisis and in the current COVID-19 pandemic. As you are aware, NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve nearly 121 million consumers with personal and small business financial service products. I appreciate the opportunity to share how credit unions have been impacted by both the regulatory changes after the financial crisis and the COVID-19 pandemic. We stand ready to provide any additional assistance as needed.

I outline below our responses to the seven areas where you have asked us to provide information:

1. Individual regulations, regulatory programs and regulatory reform initiatives promulgated or instituted since 2008 that significantly impacted your business' or member businesses' abilities to create or maintain jobs, provide consumers with goods or services, obtain credit, supplies, energy, or other important inputs, compete fairly with other businesses, expand or locate operations or sales, innovate, or grow as much as or more than otherwise would have been possible;

Credit unions face a strict regulatory regime, while their relatively small size makes compliance costs difficulty to bear. The leading source of regulatory burden since 2008 has been the enactment of the Dodd-Frank Act and the new regulatory regime created under it. This massive legislative package was designed to go after the bad actors who caused the financial crisis in order to prevent future abuses. Unfortunately, however, credit unions have found themselves still subject to these new regulations despite not having caused the financial crisis. This new regulatory regime has been a major contributing factor to the increased consolidation of the credit union industry—the number of credit unions has declined by over 2,000 institutions since 2010, nearly 30 percent of the industry. Ultimately, it is not a single regulation or group of regulations that led to the increased regulatory burden, but rather the tidal wave of so many new regulations and changes that credit unions were required to comply with.

As you know, the creation of the Consumer Financial Protection Bureau (CFPB) was a major part of the Dodd-Frank Act. NAFCU believes that credit unions should not have been subject to the authority of this new agency and should have fully remained under the purview of the National Credit Union Administration (NCUA). As the prudential regulator of federally-insured credit unions, the NCUA is best situated with the knowledge and expertise to regulate credit unions due to their unique nature. Since its creation, the CFPB has subjected credit unions to two primary regulators and the burdens that come with it. Since its creation, the CFPB has released a large number of regulations stemming from the Dodd-Frank Act, which have had a significant impact on credit unions. Some key examples of new burdens stemming from the Dodd-Frank Act include:

- **Qualified Mortgage (QM)/Ability-to-Repay (ATR)**. While the industry has now adjusted to this new standard, this was a significant regulatory change in the mortgage market that led to the revamping of mortgage lending programs at credit unions.
- **The *Home Mortgage Disclosure Act* (HMDA)**. HMDA requires credit unions to disclose certain information regarding loans originated or purchased by the credit union. HMDA is implemented by the CFPB's Regulation C, which was recently amended to include home equity lines of credit, establish transactional thresholds for coverage, and expand the number of HMDA data points collected from credit unions, adding compliance burdens. While there have been some recent efforts to limit impact on smaller institutions, not enough has been done.
- **Mortgage Servicing Rules and the TILA/RESPA Integrated Disclosures (TRID)**. The rigid compliance and timing requirements of TRID adds an additional layer of compliance that burdens small credit unions. To this day, credit unions continue to struggle with the technical details of these disclosures and ask the CFPB for more clarity and guidance.
- **The Remittance Transfer Rule**. Section 1073 of the Dodd-Frank Act amended the *Electronic Fund Transfer Act* (EFTA) by adding a new section 919, which instituted new and complex disclosure rules that resulted in a sizeable share of credit unions exiting the remittance market. While subsequent amendments to the CFPB's remittance rules have gradually addressed the most egregious burdens, the reality is that many credit unions have stopped providing remittance services altogether because managing remittance volume to remain below the Remittance Rule's safe harbor threshold is burdensome. Congress should amend the EFTA to provide a safe harbor threshold that exempts all credit unions from the Remittance Rule. This will help credit unions offer these services at more affordable prices and encourage former remittance providers to reenter the market, improving competition and accessibility for consumers.
- **Interchange Price Caps.** Arbitrary caps on interchange fees in the Dodd-Frank Act hurt both credit unions and their members. Interchange fees support an innovative and reliable electronic payments market which benefits consumers and businesses. Credit union members benefit from interchange fees through card rewards programs and access to fast, efficient card networks. Merchants also benefit by having access to a variety of digital payment channels—access that has proven critical to support social distancing and business continuity at a time of unprecedented disruption. To ensure our nation's payments infrastructure does not stagnate or fall behind those of other countries, it is critical to allow market forces to freely dictate interchange levels.

In addition to the CFPB, credit unions are also regulated by the NCUA as a primary regulator and face a number of restrictions both in the *Federal Credit Union Act* (FCU Act) and in the NCUA's regulations. Some of these include:

- **Member Business Lending Cap**. Credit unions face arbitrary restrictions in the FCU Act on their ability to offer member business loans (MBLs). In 1998, Congress codified the definition of an MBL and limited a credit union's member business lending to the lesser of either 1.75 times the net worth of a well-capitalized credit union or 12.25 percent of total assets. The NCUA has recently updated its rules to provide more flexibility, but more can be done both regulatorily and legislatively.
- **Field of Membership Restrictions.** Currently, only multiple common bond federal credit unions are permitted to add underserved areas to their fields of membership. All credit unions would like to be able to add underserved areas to their fields of membership but cannot because of the way the law is interpreted. While the NCUA has taken steps to modernize of its field of membership requirements, more needs to be done.
- **Capital Requirements**. The NCUA issued a new Risk-Based Capital (RBC) rule in 2014 that would stand to put new onerous capital requirements on credit unions. This new RBC rule places pressure on credit unions to build their balance sheets in certain ways and to avoid certain investments over others. Although in 2019 the NCUA Board delayed the implementation of the rule to 2022, changes still need to be made before it takes effect.

In addition to the CFPB and the NCUA, credit unions are also subject to a number of other rules and regulations both in statute and stemming from other agencies. One example is the *Military Lending Act* (MLA). In July 2015, the Department of Defense (DoD) released its final rule amending regulations under the MLA. The new rule vastly expands the number and types of products that are subject to the MLA. Credit unions that were not covered before had to develop rigorous MLA compliance policies and procedures.

Another example is the new Current Expected Credit Loss (CECL) standard from the Financial Accounting Standards Board (FASB). The CECL standard is an unnecessarily complex accounting method for credit unions that only adds to mounting regulatory stress, and we have consistently advocated that credit unions be exempted from CECL. Requiring not-for-profit cooperatives like credit unions to comply with CECL could create new capital challenges for credit unions.

2. Individual regulations and regulatory programs rescinded or modified since 2008 in ways that significantly impacted your business' or member businesses' abilities to create or maintain jobs, provide consumers with goods or services, obtain credit, supplies, energy, or other important inputs, compete fairly with other businesses, expand or locate operations or sales, innovate, or grow as much as otherwise would have been possible;

The most significant regulatory relief since 2008 was the passage of S. 2155, the *Economic Growth, Regulatory Relief and Consumer Protection Act*, during the 115th Congress. This bipartisan bill was instrumental in rolling back and modifying regulation to help credit unions better serve their members. Specific steps in the bill that were helpful include:

- **Minimum Standards for Residential Mortgage Loans.** This provision provided that certain mortgage loans that are originated and retained in portfolio by an insured depository institution or an insured credit union with less than $10 billion in total consolidated assets will be deemed Qualified Mortgages (QMs) under the *Truth in Lending Act* (TILA) while maintaining consumer protections, thus providing credit unions with key regulatory burden relief and safe harbor for these mortgage loans.
- **Access to Affordable Mortgages.** This provision provides a common-sense tailored exemption from appraisal requirements under the *Financial Institutions Reform, Recovery, and Enforcement Act of 1989* for certain mortgage loans with a balance of less than $400,000 if the originator is unable to find a State certified or State licensed appraiser to perform an appraisal after a good faith effort to do so.
- **HMDA Adjustment.** This provision provides regulatory relief to small depository institutions that have originated less than 500 closed-end mortgage loans or less than 500 open-end lines of credit in each of the two preceding calendar years by exempting them from certain disclosure requirements under the *Home Mortgage Disclosure Act* (HMDA).
- **Credit Union Residential Loans.** This provision provided that a one- to four-unit dwelling that is not the primary residence of a member will not be considered a member business loan (MBL) under the *Federal Credit Union Act*. This allows credit unions to treat loans that qualify for the exemption as residential loans with lower interest rates—similar to how banks make those loans to small businesses—and not have to count them toward their MBL cap.
- **Escrow Requirements Relating to Certain Consumer Credit Transactions.** This provision provided an exemption from escrow requirements under TILA for certain loans made by an insured depository institution or an insured credit union.
- **No Wait for Lower Mortgage Rates.** This provision removed the three-day wait period required for the combined TILA/RESPA mortgage disclosure if a creditor extends to a consumer a second offer of credit with a lower annual percentage rate.
- **Budget Transparency for the NCUA.** This provision required the National Credit Union Administration (NCUA) to publish and hold a hearing on a draft budget prior to submitting the budget, ensuring transparency.
- **Making Online Banking Initiation Legal and Easy**. This language permits an insured depository institution or insured credit union to record personal information from, and make a copy of, a driver's license or personal identification card for purposes of opening an account or obtaining a financial product or service through an online service, thus improving consumer access to online banking services.

Additionally, the NCUA and, in recent years, the CFPB, have taken some steps to provide relief or try to better tailor regulations. Examples include the NCUA's new field-of-membership requirements, the NCUA's aforementioned RBC rule delay, and the NCUA moving more credit unions to extended exam cycles. Still, more can be done in all of these areas. While the CFPB has only used its authority under Section 1022 of the Dodd-Frank Act to grant limited exceptions to its rules, NAFCU believes that it should be able to use this authority to grant broader exemptions from new burdens to credit unions.

3. Individual regulations or regulatory programs that have adversely impacted your business' or member businesses' abilities to survive or create or maintain jobs, operations or growth during the COVID-19 pandemic;

Below are a few examples of our most recent regulatory concerns in the COVID-19 pandemic era. This list encompasses reporting issues as well as regulator and statutory issues that credit unions have faced.

- **HMDA Filing Deadlines**. HMDA filing was due March 2, just as the pandemic was hitting the United States. Late filings or delayed corrective re-filings should be excused without penalty. The obligation to quarterly record transactions should also be temporarily suspended.
- **CFPB Consumer Complaint Database**. The CFPB should extend the response deadline for items in the Consumer Complaint Database to ensure that institutions have time to prioritize direct communication with consumers over verifying company identification and other administrative activities regarding the database.
- **Exams.** While the NCUA has moved more credit union exams to a virtual posture, the failure of the agency to even match what banking regulators have done to provide extended exam cycles for banks adds additional burdens on many credit unions, especially during the pandemic. The NCUA should extend exam cycles for all well-run, low-risk credit unions.
- **Member Business Loan (MBL) Cap**. As mentioned above, this arbitrary cap limits a credit union's MBL to the lesser of either 1.75 times the net worth of a well-capitalized credit union or 12.25 percent of total assets. This arbitrary cap has not been updated since its enactment and has severely limited the ability of credit unions to help member businesses.
- **Credit Union Governance**. Currently, a problematic member of a credit union can only be expelled by a two-third's vote at a special in-person member meeting of the credit union. Although the NCUA adopted several exceptions to permit virtual meetings during the COVID-19 pandemic, expulsion of members was not included. This obviously poses many problems in the COVID-19 era when there are strict limits on how many people can meet in any one place.
- **Electronic Signatures and Remote Services**. The *Electronic Signatures in Global and National Commerce Act* (E-SIGN Act) was passed nearly 20 years ago and generally allows electronic signatures and documents to carry the same legal weight as hard copy or paper documents. At a time when social distancing has become paramount to the health and safety of credit union members, employees, and their families, credit unions are discovering that some of the E-SIGN Act's outdated provisions have become a burden and have approached the CFPB and Congress to provide relief in this area.
- **Loan Maturity Limits in the FCU Act**. The 15-year general maturity limit found in the FCU Act for most credit union loans (with certain exceptions, such as owner-occupied mortgage loans) hampers credit unions' ability to provide certain products to their members. For example, members may want a longer maturity than 15 years for student or mortgage loans. They may need to refinance to lower payments or may want to take advantage of great rates and purchase a home that they will occupy in the future, such as

members of the military who may be stationed out of an area. While the NCUA has tried to help via regulation, statutory changes are needed.

4. Your business' or member businesses' experiences that show it would be important to rescind or modify specific regulations or regulatory programs, or suspend or modify their enforcement temporarily, in order to facilitate recovery from the effects of the COVID-19 pandemic;

One of the most troublesome regulations that credit unions have had to deal with is the member business loan (MBL) cap. This troublesome cap has hampered credit unions' ability to extend liquidity to businesses that need it urgently. When the Paycheck Protection Program (PPP) was enacted, credit unions were approved as lenders and began to originate loans. Coupled with the MBL cap, this put credit unions in a difficult position. While PPP loans do not count toward the MBL cap, many small businesses joined credit unions to get access to PPP loans when other lenders turned them away. In the aftermath of the PPP program, those same small businesses are going to continue to need access to credit from their credit unions to be able to continue operations. The MBL cap threatens to constrain credit unions' ability to help those small businesses.

Furthermore, as the nation faces continued uncertainty regarding the severity and duration of the pandemic, the CFPB forges ahead with an ill-timed rulemaking to implement Section 1071 of the Dodd-Frank Act. Section 1071 mandates extensive data collection for certain small business loans made by credit unions and other lenders, nearly on the scale of HMDA. Most credit unions have minimal staff devoted to underwriting small business loans and much of their time has been consumed with administering PPP loans. Implementing this rule would be extremely costly under ordinary circumstances but at present will cause even greater disruption. Unfortunately, the CFPB is bound by a court settlement to publish an outline of its proposed rule this year, and then assemble a panel of small business representatives to discuss what is likely to be a complex and lengthy set of alternatives. It is unclear how the CFPB intends to engage in this consultative process, mandated by the *Small Business Regulatory Enforcement Fairness Act* (SBREFA), and whether the assembled business representatives will have the bandwidth to assess or challenge the CFPB's rulemaking assumptions. Given the logistical difficulties of convening a SBREFA panel in the midst of the pandemic, and the fact that additional small business lending programs may be authorized by Congress, which will demand the attention of credit union staff, Congress should delay the implementation of Section 1071 of the Dodd-Frank Act until at least 2023.

We also believe it is important to extend relief provisions from the CARES Act in order to continue to facilitate the economic recovery. These provisions include:

Section 1102: SBA Paycheck Protection Program
NAFCU believes it is important to simplify the loan forgiveness process and application for smaller PPP loans. While credit unions are working with their members to assist them with the current loan form, the complexity of the forgiveness rules and application is posing challenges for many small businesses who may not have the staff or expertise for such a complex application, especially with the current economic challenges. As such, NAFCU is supportive of a simplified loan forgiveness process for PPP loans under a $150,000 threshold, such as proposed in H.R. 7777, the *Paycheck Protection Small Business Forgiveness Act*.

Section 4016: NCUA's Central Liquidity Facility
We support making permanent the changes to the NCUA's Central Liquidity Facility (CLF) in section 4016. We would note that NCUA Chairman Rodney Hood and Board Member Todd Harper have both called on Congress to make these changes permanent. The CLF is an important liquidity tool for credit unions, and the recovery ahead will likely extend beyond the end of 2020, when the changes are currently set to expire. NAFCU believes strong liquidity is vital to ensuring loans to struggling families and small businesses continue to flow within the credit union system.

Section 4013: Troubled Debt Restructuring (TDR)
NAFCU appreciates the provisions in this section giving the NCUA broad authority to suspend Generally Accepted Accounting Principles (GAAP) requirements with respect to loan modifications related to COVID-19 that would otherwise be categorized as TDRs. We urge extension of this flexibility to at least December 31, 2021 to allow any post-forbearance workouts to be included in the applicable period. We would also support additional legislative steps to provide relief in this area.

5. Potential new regulations, regulatory programs, or regulatory reform initiatives that your business' or member businesses' experiences show to be of the kinds that are most important to avoid, imitate or expand as our Nation seeks to recover from the effects of the COVID-19 pandemic and grow its economy in the succeeding years;

Over the last several months, we have sent several letters to the Congress urging consideration of provisions that would help our members and the small businesses they serve. In addition to the CARES Act provisions mentioned above, there are other sections of the CARES Act that should be expanded to help credit unions:

Section 4008: Deposit Insurance
NAFCU would like to highlight the lack of parity between credit unions and community banks in section 4008 of the CARES Act. This section appears to allow the Federal Deposit Insurance Corporation (FDIC) to establish an unlimited maximum guarantee, whereas the "equivalent" provision for the NCUA appears to only apply to noninterest bearing transaction accounts. Should you opt to extend this coverage, we ask that you consider providing the NCUA with the same powers as the FDIC, extending their ability to establish a maximum guarantee to all shares or deposits held in a federally-insured credit union.

Section 4014: Current Expected Credit Loss (CECL)
Credit unions remain well-capitalized as an industry and stand ready to help in the economic recovery. However, new accounting requirements could stymie these efforts. Even though FASB has delayed its new CECL standard for credit unions until the first quarter of 2023, credit unions will have to start bringing their portfolios in line in 2021 and 2022. The temporary relief for 2020 provided in section 4014 is a good first step. Still, CECL will remain a burden on credit unions as the economy recovers. This could cause constraints on lending and delay our nation's economic recovery. NAFCU believes that credit unions, as not-for-profit cooperative institutions, should not be subject to the CECL standard as they did not engage in the irresponsible practices that precipitated the Great Recession. If credit unions are not exempted, further delaying

implementation of this standard could help provide additional clarity and relief for credit unions. We would note that NCUA Chairman Hood called for a credit union exemption to the CECL Standard in an April 30, 2020 letter to FASB, stating that "…the compliance costs associated with implementing CECL overwhelmingly exceed the benefits."

Section 4012: Community Bank Leverage Ratio

Section 4012 of the CARES Act provides banking regulators with the authority to temporarily lower the Community Bank Leverage Ratio (CBLR) from nine percent to eight percent. Before the pandemic, the NCUA Board had expressed interest in adopting an analog to the CBLR in conjunction with its RBC rule; however, the more immediate constraint on credit union capital takes the form of statutorily prescribed net worth levels under the *Federal Credit Union Act's* (FCU Act) prompt corrective action (PCA) provisions. In his April 29, 2020 letter to Senate Banking Committee Chairman Mike Crapo, NCUA Chairman Hood requested temporary capital flexibility for the NCUA and credit unions. Specifically, he asked for "a reduction in the level at which credit unions are considered well capitalized from a net-worth ratio of seven percent to six percent and adequately capitalized from six percent to five percent during the pandemic." Any extension of the CBLR must also include this temporary capital flexibility for credit unions, so that credit unions may loan more to their members who need it.

In addition to extending and expanding CARES Act provisions, there are a number of additional steps that can be taken to help credit unions in response to the pandemic:

Allow Credit Unions to Do More to Help Small Businesses

NAFCU supports legislation pending in the House, H.R. 6789, the *Access to Credit for Small Businesses Impacted by the COVID–19 Crisis Act of 2020*, which would provide temporary relief from the credit union member business lending (MBL) cap for loans to help small businesses recover from the COVID-19 crisis. We urge you to include this legislation in the next coronavirus relief package.

Provide Emergency Funding for CDFIs and the CDRLF

The Community Development Financial Institutions (CDFI) Fund and the NCUA's Community Development Revolving Loan Fund (CDRLF) are important tools for credit unions helping underserved and lower-income communities. These programs can assist CDFI-certified and low-income designated credit unions in establishing specific programs to assist the most financially vulnerable consumers and ensure their own resiliency and survival during our current economic and public health emergency. NAFCU urges Congress to increase funding for the CDFI and CDRLF programs. Providing $1 billion in emergency funding for the CDFI Fund would allow more credit unions to access monies for specific programs to help members who need it most. NAFCU appreciates that this funding was included in the House's Phase IV relief bill, the *Health and Economic Recovery Omnibus Emergency Solutions Act* (HEROES Act) and that 37 Senators signed a letter urging this level of funding. We would also urge you to consider measures to make it easier for credit unions to become a CDFI.

Modernize the E-SIGN Act

The *Electronic Signatures in Global and National Commerce Act* (E-SIGN Act) was passed nearly 20 years ago and generally allows electronic signatures and documents to carry the same legal weight as hard copy or paper documents. At a time when social distancing has become paramount to the health and safety of credit union members, employees, and their families, credit unions are discovering that some of the E-SIGN Act's outdated provisions have become a burden. Over 90 percent of NAFCU members responding to a survey noted challenges in getting documents signed in light of the pandemic. We urge inclusion of S. 4159, the *E-SIGN Modernization Act of 2020*, in any relief package.

Limit Liability for Essential Businesses

With credit unions and other financial institutions deemed "essential" to remain open and serve consumers, it is important that they do not face undue legal liability from those who may seek to exploit them for financial gain related to the COVID-19 pandemic. Congress should enact legislation to ensure that essential businesses, serving as "good actors" to the public by providing important services, are not the targets of demand letters and lawsuits.

Oppose Provisions That Will Harm Credit Unions and Their Members

It is also important that Congress reject any idea, even if well-meaning, that could place new hardships on credit unions and hamper their ability to help members get access to credit. Enacting provisions now that harm community financial institutions could exacerbate the current health and economic crisis.

Oppose Any Effort to Extend Interchange Price Caps

We are dismayed to learn that some groups have proposed extending debit interchange price caps to credit cards as a response to the crisis. When the price cap was set on debit interchange rates in the Dodd-Frank Act, the retail industry did not follow through on their promise to pass on interchange fee savings to their customers. Now they are asking for the same failed price controls to be extended to credit card transactions in response to the pandemic. This would cause irreparable harm to credit unions and could reduce the availability of credit to consumers.

The electronic payments system is a two-sided market, with consumers on one side and merchants on the other. Both sides benefit from the arrangement, with card networks setting interchange rates based on the cost of doing business, and the benefit to consumers and merchants. The credit card system allows consumers to purchase goods and services from merchants that they may not be able to otherwise. In the wake of the pandemic, many merchants are requesting cashless payments for employee safety. This is evidence that the electronic payments system offers real value to merchants and consumers alike. Ultimately, merchants receive far more value from accepting electronic payments than they pay in interchange fees. Any new caps on interchange fees would only hurt community institutions such as credit unions and the American consumer. NAFCU opposes these efforts and we urge you to reject proposals to extend interchange price caps.

Reject Efforts That Could Lead to Elimination of Courtesy Pay Programs

We are concerned that some have called for a moratorium on courtesy pay fees, which could lead to an elimination of this important option for consumers. Such a blanket moratorium may end up denying credit union members a service they have indicated they want and to which they have affirmatively consented. A number of institutions are already waiving fees and helping members with alternative options, including short-term, low- or no-interest loans. The courtesy pay program allows credit unions to pay a transaction even when the consumer has insufficient or unavailable funds in the account. This can be a faster way to help consumers in need make necessary payments or get needed supplies. A blanket effort to eliminate courtesy pay fees may force institutions to stop many of these programs due to concerns about abuse and the financial impact on the institution. Consumers could then lose out on this immediate assistance option, which, again, is something they have already opted to have. We urge you to oppose any moratorium on courtesy pay fees that would threaten this important service and cause more harm than benefit to consumers.

Legislatively Mandated Blanket Loan Forbearance Is Problematic

We are concerned about proposals for mandated blanket loan forbearances as a response to the pandemic. The forbearance provisions in sections 4022 and 4023 of the CARES Act raised a number of issues and concerns for credit unions that were not addressed in the bill. Broad mandated loan forbearance could create both operational questions and safety and soundness issues for financial institutions without providing regulators the flexibility to address these concerns. Credit unions are already working with members to ensure they get the relief they need, including providing forbearance and skip payments options. Blanket mandated loan forbearance, regardless of the consumer's actual need, can strain income to a financial institution, making it harder to operate and provide additional credit to members.

Many existing loan payment requirements often fall on the financial institution during a forbearance period. These requirements stand to compound challenges for financial institutions during periods of forbearance. Legislatively mandated blanket forbearance programs would deprive credit unions of the ability to work with a member to achieve a mutually agreeable solution that protects both the member and the institution. We caution Congress against enacting additional blanket loan forbearance provisions that could create additional hardships and challenges for credit unions. NAFCU would oppose such efforts.

Overbroad Restrictions on First Party Debt Collection Are Problematic

We would also caution against overly broad restrictions on credit unions' ability to collect on consumer debt during the pandemic. Credit unions do not engage in harmful debt collection tactics and, as outlined above, credit unions are working with their members to ensure they get the relief they need during this crisis, including waiving late fees and offering payment deferrals. We are concerned that a blanket restriction on first-party debt collection during a national emergency could put unnecessary stress on credit unions. As you know, credit unions are already under significant pressure due to this crisis. While the credit union system is well-capitalized and can weather this pandemic, we are concerned that compounding this stress could strain their liquidity and impact their ability to provide credit to members in need.

The Integrity of the Credit Reporting System Must be Maintained

The nation's credit reporting system is an important tool for financial institutions. Blanket suppression of adverse information in credit reports could disrupt consumer access to credit and lead to significant changes in how lenders use credit information to make loans. We urge Congress to reject efforts aimed at blanket suppression of adverse credit reporting information. A better step would be to encourage efforts to allow credit reporting to reflect loans where payments are deferred or in forbearance, so these loans do not negatively affect a consumer's credit score.

Consider Ramifications of Changes to Bankruptcy Provisions
We caution you against making major changes to bankruptcy law that have not been fully and properly vetted for their impact. While it is important to ensure consumers are adequately protected and able to access financial products and services, it is also important to examine the potential considerable impacts that changes to underwriting requirements could have on financial institutions and how these changes could impact the future availability of credit.

Ensure Big Tech Entrants to Financial Services Follow the Rules of the Road
Finally, we are concerned about the continued expansion of Big Tech into the financial services sphere. This includes recent actions by the FDIC to approve new Industrial Loan Company (ILC) charters and the possibility that more may be on the way. We support calls for a moratorium on ILC charter approvals at this time, so that this issue can be properly examined by Congress and regulators outside of the pandemic and would support such a moratorium being included in the next phase of relief.

6. Past regulations or regulatory programs that your business' or member businesses' experiences show would be important not to reimpose as our Nation seeks to recover from the effects of the COVID-19 pandemic and grow its economy in the succeeding years; and,

Between regulatory actions and the legislative responses from Capitol Hill, credit unions have faced many, quick changes. Some of the most helpful actions and responses, which we urge you to maintain, are included below.

- **Regulation D's Transfer Limit**. The Federal Reserve's action to amend Regulation D to remove the six-transfer limit on savings deposits accounts is proven to be extremely helpful for consumers during the pandemic. Removing this artificial constraint has made it easier for consumers to transfer more money from their savings to their checking and other accounts, allowing them to better manage their accounts during the pandemic. The Federal Reserve has indicated that this change will be permanent, and it is important that this artificial limit is not reinstated post-pandemic.
- **Traditional On-Site Examinations**. Virtual exams from the NCUA and CFPB were generally found to be successful and not as difficult as anticipated. Offsite exams using modern technology reduce the overall burden on the credit union, allowing it to focus on serving its members. The NCUA recently solicited feedback on its plans to move to a primarily virtual examination process in the next 5 to 10 years, and NAFCU provided detailed comments regarding credit unions' experiences with virtual exams so far in 2020. Continuing virtual exams to whatever extent possible post-pandemic would be helpful in reducing direct burdens on credit unions.
- **Troubled Debt Restructurings**. The CARES Act gave the NCUA authority to address loan modifications that would be classified as TDRs. This authority needs to be extended beyond December 31, 2020. H.R. 7913, the *Financial Institution Forbearance Act*, has already been introduced in the House to achieve this and we urge you to support this bill.
- **Central Liquidity Facility**. Increasing the borrowing authority and reducing barriers to accessing the CLF has had an important effect on credit unions. The CLF is an important liquidity tool for credit unions, and the recovery ahead will likely extend beyond 2020.

7. Other suggestions on how individual regulations, regulatory programs, regulatory reforms, the rulemaking process in general, or regulatory enforcement could be improved.

As mentioned in more detail above, there are many ways that credit unions could be helped both during the pandemic and beyond. NAFCU believes that it is important that credit unions have a regulatory environment where they can grow and thrive. We outline the details of this environment in our advocacy priorities at https://www.nafcu.org/priorities.

Included below is a concise list of some of the top suggestions that could help our members survive and thrive.

- Improving the process for credit unions seeking changes to their field of membership;
- Ensuring an appropriate capital regime for credit unions;
- Exempting credit unions from onerous CFPB regulations intended for big banks and returning full examination and enforcement authority for credit unions to the NCUA;
- Providing MBL cap relief;
- Repealing the debit interchange price caps established by the Dodd-Frank Act;
- Expanding credit union investment authority;
- Modernizing outdated credit union governance provisions in the FCU Act;
- Updating the E-SIGN Act to allow more regulatory certainty;
- Enacting a national data security standard;
- Updating advertising requirements for loan products and share accounts;
- Making permanent the changes to the Central Liquidity Facility (CLF);
- Granting of waivers by NCUA to a federal credit union to follow a state law; and,
- Updating, simplifying and making improvements to regulations governing check processing and fund availability.

Thank you again for the opportunity to share our insight on the regulatory environment since 2008 and the challenges stemming from the pandemic. We look forward to working with you on this initiative. If we may be of further assistance or answer additional questions, please reach out to me or our Vice President of Legislative Affairs, Brad Thaler, at 703-842-2204 or bthaler@nafcu.org.

Sincerely,

B. Dan Berger
President and CEO

cc: The Honorable Carolyn Maloney, Chairwoman, Committee on Oversight and Reform