Credit Union National Association
CUNA

Jim Nussle
President & CEO

Phone: 202-508-6745
jnussle@cuna.coop

99 M Street SE
Suite 300
Washington, DC 20003-3799

June 21, 2022

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
United States House of Representatives
Washington, D.C. 20515

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
United States House of Representatives
Washington, D.C. 20515

Dear Chairwoman Waters and Ranking Member McHenry:

On behalf of the Credit Union National Association (CUNA), I am writing regarding the mark-up of proposed legislation before your Committee, including H.R. 5912, the Close the ILC Loophole Act, H.R. 4495, the Downpayment Toward Equity Act of 2021, and H.R. 4277, the Overdraft Protection Act. CUNA represents America's credit unions and their more than 130 million members.

H.R. 5912, The Close the ILC Loophole Act

We support the passage of H.R. 5912, the Close the ILC Loophole Act, to prevent the further exploitation of the loophole by firms seeking to gain all of the advantages of an FDIC-insured bank charter without the concomitant supervision and regulation that Congress has established for the corporate owners of full-service insured banks. When this exception was initially created, ILCs were typically small financial institutions, and companies used the charter for the limited purpose of providing small loans to industrial workers who could not otherwise obtain credit. However, since that time, large commercial companies have used the ILC charter to gain access to the U.S. financial system and control entities that have essentially all of the powers of a full-service commercial bank, including the ability to accept deposits, make consumer and commercial loans, and effectuate payments.

Although ILCs have the powers of a commercial bank, their corporate owners—unlike the owners of commercial banks—are not subject to consolidated supervision and regulation by a federal banking agency, which can allow risks to build up in the organization outside the view of any federal supervisor. Simply put, this regulatory loophole creates safety and soundness risks for the institution, risks to the financial system, and additional risks for consumers and taxpayers.

We recognize that some firms have previously acquired an ILC in reliance on the exception and may continue to operate as such, subject to appropriate safeguards that permit the ILC's federal supervisor to protect the safety and soundness of the FDIC-insured ILC, the financial system, and consumers. However, any of these pre-existing ILCs should not be permitted to essentially sell that status to an unaffiliated third party, thereby allowing a new company to take advantage of the exception after the loophole is closed by Congress.

We encourage all Members of the Committee to vote **YES** on this legislation.

H.R. 4495, the Downpayment Toward Equity Act of 2021

Credit unions recognize the importance of addressing the racial homeownership gap and support efforts to establish a down-payment assistance program that will assist first-generation homebuyers and low-income borrowers become homeowners. We support the ability to layer state assistance and the criteria the bill establishes regarding area median income (AMI) which will hopefully allow access for borrowers in high-cost areas. In section 10(3), we ask that credit unions that serve underserved areas be explicitly included as eligible entities.

We encourage all Members of the Committee to vote **YES** on this legislation.

H.R. 4277, the Overdraft Protection Act

America's credit unions stand as a unique example of consumer protection in practice in the financial services sector. In contrast to for-profit banks and non-depository providers, credit unions are structured as not-for-profit cooperatives. As part of this structure, credit union members can rely on fair and equitable treatment by their credit union because they have a voice and a vote in its operation.

Because overdraft programs at credit unions are specifically designed with the credit union's membership in mind, there is substantial diversity in program features. For example, credit unions have established programs linking accounts, overdraft lines of credit, courtesy pay programs, and others. In addition, credit unions often couple these programs with other initiatives intended to assist members using overdraft services with the intent of helping the member avoid future or frequent overdraft use. These initiatives include direct member outreach, low-balance alerts, caps on the number of fees per day, financial management and coaching resources, low-interest or share secured credit cards, and small-dollar loans.

There are many examples of credit unions exploring and adopting changes to their overdraft programs. While it is impossible to fully account for the diverse range of services offered by credit unions, these are examples of changes some credit unions have adopted:

- Reducing fees generally;
- Reducing fees on small transactions;
- Reducing or eliminating fees on transactions that result in small negative balances;
- Adding credit cards to the range of linked account options;
- Eliminating transfer fees;
- Automating the fee waiver process;
- Capping the number of instances fees can be charged per day or another specified period of time; and
- Increasing overdraft line of credit limits.[1]

All these changes, and many others, reveal the innovative nature of credit unions and the proactive work that credit unions are doing to secure financial well-being for all.

Irrespective of innovations in overdraft, credit unions have a track-record of establishing policies and procedures aimed at assisting members that frequently use overdraft protection. When a credit union becomes aware of a member's frequent overdraft usage, they often attempt to contact the member to address the member's financial situation and offer financial education support or alternative credit products. In these communications, credit unions inform members about other options that may be available, including financial and budgetary counseling and/or traditional loan products such as personal

[1] Report "Overdraft Protection Programs: Credit Union Best Practices," Filene Research Institute available at https://filene.org/learn-something/reports/overdraft-protection-programs-credit-union-best-practices.

loans or affordable small dollar loans. These efforts support the best interest of the member and exemplify the pro-consumer nature of the credit union-member relationship.

Credit unions also establish fee waiver and forgiveness programs intended to help members who reach out for assistance. We always encourage financially distressed credit union members to contact their credit union to discuss relief options or learn about alternative products and services. Credit unions are regularly working with their members to improve their financial well-being, as helping members in need is common among America's credit unions. We strongly believe credit unions should be allowed to continue working with members to develop customized solutions that help secure their financial well-being rather than Congress adopting wholesale or de facto bans on popular financial services.

This mission-driven, member-focus is a key reason why credit union members are among the most financially healthy in America and agree that their credit union cares about them. According to CUNA's 2022 National Voter Poll, consumers who use credit unions are 40 percent more likely than their counterparts who do not use credit unions to respond "very positively" to the fact that they "can trust" their financial institution.[2] Further, credit union members are 45 percent more likely than nonmembers to respond "very positively" to the fact that their institution "cares about" their financial well-being *and* are 52 percent more likely to say their institution "has positively impacted" their financial well-being.[3]

As a recent example of credit unions' member-focused service, the pandemic presented an unprecedented challenge. Regardless, credit unions continued to deliver critical financial services to credit union members throughout the duration of the pandemic, including working with members affected by the economic turmoil. Many credit unions responded to the financial hardships of their members by offering new loan programs, relief for pre-pandemic loans, and other solutions. Overdraft protection was a part of the credit union response to struggling members, with many credit unions reducing fees to nominal levels or increasing the amount of fees they waived.

During the crisis, many consumers purchased critical goods and services intended to help them and their families weather income flow changes or health emergencies. If Congress had acquiesced to pre-pandemic calls to eliminate overdraft entirely, then it is possible the pandemic's financial impact could have been much more significant for some consumers. The notion that banning overdraft services would assist consumers in distress is misguided and, ultimately, calls for such a ban ignore the fact that temporary financial shortfalls will still exist so long as "the unexpected" can still be an expected part of life.

We believe effectively shutting down overdraft services would unnecessarily limit credit unions' ability to assist their members and is ill-advised. Rather, the best and least disruptive path forward would be to continue permitting transactions to be processed and encouraging affected consumers to reach out to and work with their local credit union to reduce or eliminate any fees or to consider other low-cost products and services. Relying on credit unions to do what they do best is preferable to an environment where consumers are getting declined in line at the grocery store or pharmacy, or experience their rent check unpaid.

When considering laws that could limit overdraft options, we urge the Congress to bear in mind the differences between banks and credit unions in offering these programs. A recent report issued by Filene Research Institute on overdraft products found that fees were lower at credit unions than at banks.[4] The credit unions studied had overdraft fees in the $25-32 range whereas banks had fees in the $29-35 range.[5] The report also noted that automated transfer fees for credit union overdraft programs with linked checking and savings accounts ranged from $5-8 and were about half the amount of the fees charged by

[2] 2022 CUNA National Voter Poll.
[3] *Id.*
[4] *See* Filene Research Institute Report, "Overdraft Protection Programs."
[5] *Id.*

banks for the same service.[6] While the fees levied at banks versus credit unions may appear similar, it is important to keep in mind that credit unions implementation of relief programs and their responsiveness to member requests for assistance are where credit unions often set themselves apart the most.

Competition and consumer demand have driven market changes for overdraft protection programs

Changes in the competitive landscape of financial services and evolving consumer expectations have led many financial institutions to evaluate and reconsider their approach to overdraft protection and other services. While credit unions often conduct periodic reviews of their overdraft programs to ensure they are competitive with similar financial institutions in their region, an increasing number are exploring new methods to approach their programs and considering new sources of noninterest income.

After carefully evaluating the needs of the consumers they serve, many providers have taken proactive steps towards eliminating or making it more difficult for customers to overdraft their accounts. While the changes announced by some of the largest financial institutions have generated the most headlines, credit unions large and small have also responded to this market change by amending their programs as well as eliminating and substantially reducing the cost of overdraft. These changes reflect a healthy system of competition among financial services providers, with the market and consumer choice—not government-mandated bans—being the primary driver. It is not yet clear how these changes will impact the current financial landscape, or how they may factor into longer-term consumer preferences when it comes to banking, but it is a market-driven trend worth paying attention to.

Most importantly, the right of consumers to not only choose their financial institution but also the products and services they use is a pillar of the consumer financial services market and the American economy more broadly. In the overdraft context, consumers are given clear disclosures explaining overdraft protection and the option to choose whether to opt-in to those services or not. The costs of overdraft are not hidden, obscured behind legalese, nor are consumers unaware of the behavior that results in an overdraft: spending more money than one has in one's account. On the average cell phone, dissatisfied consumers have access to more sources of information on the alternative banking options available to them than they ever have in history. As financial institutions review and potentially amend their products and services to meet consumer demands, the market—not restrictive legislation or regulation—is best positioned to determine the future of overdraft protection. To that end, we believe consumers seeking a better banking option will recognize the benefit of credit union membership and join a local credit union, the best financial partner for America's citizens and communities.

We encourage all Members of the Committee to vote **NO** on this legislation.

On behalf of America's credit unions and their more than 130 million members, thank you for your leadership on these issues.

Sincerely,

Jim Nussle
President & CEO

[6] *Id.*