November 16, 2017

The Honorable Orrin Hatch
Chairman
Committee on Finance
United States Senate
Washington, DC 20510

The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate
Washington, DC 20510

Dear Chairman Hatch and Ranking Member Wyden:

On behalf of the Credit Union National Association (CUNA), I am writing regarding several provisions contained in the Senate Finance Committee Chairman’s mark of the Tax Cuts and Jobs Act. CUNA represents America’s credit unions and their 110 million members.

Credit unions are Americans' best option for financial services, and the credit union tax status represents one of the best investments that the government makes in its citizens. We thank the Committee for preserving the existing credit union federal income tax status. The importance of having not-for-profit credit unions as vibrant and viable alternatives in the financial services marketplace is as significant today as it has ever been. Credit unions provide accessible and affordable basic financial services to people of all means and encourage the equitable distribution of capital across all individuals, families, communities and small businesses. Credit unions infuse financial market competition with multiple and differentiated competitive business models. They help keep financial services accessible – and affordable – for all consumers, whether they are members of a credit union or not.

The Chairman’s mark, however, includes several provisions that could impact tax-exempt organizations like credit unions, including expansion of the Unrelated Business Income Tax (UBIT) and new excise taxes on executive compensation. Without legislative text, we cannot be completely certain of the applicability and impact of certain provisions to credit unions. Nevertheless, we respectfully raise these concerns for your consideration.

Unrelated Business Income Tax

All credit unions are exempt from the federal corporate income tax under §501(c)(1) of the Internal Revenue Code for federally-chartered credit unions and under §501(c)(14)(A) for state-chartered credit unions. However, income from state-chartered credit unions that the Internal Revenue Service (IRS) deems to be unrelated to the credit union’s tax-exempt purpose is subject to taxation under §511-513.

The list of credit union activities subject to UBIT has been scaled back drastically in recent years as the courts and Internal Revenue Service (IRS) have deemed most of these activities to be related to the credit unions’ statutory mission of “promoting thrift and providing loans for provident purposes.” We are monitoring several items related to tax-exempt organizations for their potential impact on credit unions including a provision that would apply UBIT to the sale or licensing by a tax-exempt organization of its name or logo (including any related trademark or copyright), and a provision that would prohibit a practice used by tax-exempt entities that operate more than one unrelated business. This provision would prohibit business losses that one business may use to offset income from another.
Income that is subject to UBIT is defined as any net income derived from any “unrelated trade or business” – defined as “activity not substantially related to organization’s exempt purpose.” Income is “substantially related” if it “contributes importantly to accomplishment of the organization’s exempt purposes.” UBIT was designed to prevent unfair market competition by tax-exempt entities and taxpaying for-profit entities. Credit unions’ “exempt purposes” include promoting thrift, creating a source of credit, mutuality and member service. The IRS requires that state-chartered credit unions file annual Form 990s, like most other tax-exempt entities. These credit unions must also file a Form 990-T (UBIT Form) if the tax-exempt entity has unrelated business taxable income to report.

State-chartered credit unions began operating in the United States in 1909, before there was any federal income tax. The purpose of these credit unions has always been defined by state law and vary from state to state. But those purposes can be boiled down to this: state-chartered credit unions are intended to promote thrift and provide a source of credit to their members on a cooperative, not-for-profit basis. State-chartered credit unions have and continue to serve this purpose.

In 1934, credit unions formed an insurance company, CUNA Mutual Group, concurrently with Congress’s passage of the Federal Credit Union Act and the establishment of the first federal credit unions. Insurance products have been offered by both federal and state-chartered credit unions ever since. Congress was presumably well aware of this fact when it codified the exemption for state-chartered credit unions in 1951. In the 1970s, Congress adopted the Unrelated Business Income Tax (“UBIT”) for tax-exempt organizations. It provides that certain income that is not substantially related to the tax-exempt purpose of such organizations is subject to corporate income tax. It is our sincere hope that the Finance Committee will exclude the UBIT expansions on credit unions that are contained in the Chairman’s mark.

**Excise Taxes on Executive Compensation**

Today, certain employees at tax-exempt entities, including credit unions, pay an excise tax up to 25 percent on their total compensation (salary and benefits). The Chairman’s mark would expand current law to add a 10 percent excise tax to the employer for each employee subject to the excise tax. The Senate mark would subject tax-exempt organizations to a 20 percent tax on total compensation in excess of $1 million paid to any of its five highest paid employees. We believe these provisions are unnecessary and potentially harmful if applied to credit unions.

Credit unions are member-owned financial cooperatives where every member has an equal vote in the governance of the institution. Credit union board members are generally unpaid volunteers. Thus, credit union earnings are spent transparently and with strict oversight. This places a significant check on excessive executive and other employee compensation and benefits.

Further, these provisions could be harmful if applied to credit unions because credit unions compete with banks for highly skilled and knowledgeable executive talent. Our ongoing analysis of compensation models show that for institutions of similar size the median CEO compensation at a credit union is roughly 10 percent lower than their bank counterparts. Additional penalties on non-profit employee compensation could limit credit unions’ ability to attract and retain high quality executive-level human resources.

**Conclusion**

In the aftermath of the financial crisis, more Americans are choosing credit unions as their best financial partner. In fact, more than 12 million Americans have joined credit unions since 2008. Some may have joined because their bank failed, moved or was acquired by another institution; and others may have joined because they grew frustrated with the policies and fees of the for-profit sector. What is important is
that when they needed an alternative, a healthy credit union system with the capacity to grow was ready to serve them, and as credit union members, they benefit from conducting their financial services with an institution that they own. The credit union tax status is crucial to encourage and support the continued existence of this alternative, cooperative component of the financial system and we thank the Committee for preserving the existing credit union federal income tax status.

On behalf of America’s credit unions and the 110 million members, thank you very much for your consideration of our views.

Sincerely,

Jim Nussle
President & CEO