NASCUS

The National Voice of the State Credit Union System

July 9, 2019

The Honorable John Lewis
Chairman
House Ways & Means Committee
Oversight Subcommittee
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Mike Kelly
Ranking Member
House Ways & Means Committee
Oversight Subcommittee
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Chairman Lewis and Ranking Member Kelly:

On behalf of the National Association of State Credit Union Supervisors (NASCUS), I would like to thank you for your willingness to solicit comments on this issue to gain a better understanding of the impact to tax-exempt organizations. In response, I am writing to make you aware of our concerns regarding anticipated tax liabilities related to the 21% excise tax on excess executive compensation required under the Tax Cut and Jobs Act of 2017 (TCJA).

The TCJA imposes a 21% excise tax on excess executive compensation for a tax-exempt organization's five "highest-compensated" employees. The new excise tax would apply to remuneration paid by the organization to a covered employee in excess of $1 million during the tax year. Under the Act, applicable "remuneration" not only includes wages subject to federal withholding but also certain deferred compensation retirement plans. The inclusion of retirement benefit plans under this provision will result in a significant hardship for tax- exempt organizations, such as credit unions, that have not had the notice and opportunity to prepare accordingly. It should also be noted that the TCJA limits the implications of the deductible compensation costs on the for-profit sector by providing an exemption for pre-existing executive compensation agreements in effect on or before November 2, 2017. There is no comparable "grandfathering" exemption provided for similar pre-existing executive compensation agreements in the tax-exempt sector. We are incredibly concerned about the uneven treatment of pre-existing compensation agreements for tax-exempt organizations and have taken every opportunity to raise our concerns with members of Congress. We believe that simple fairness calls for Congress to either provide a similar exemption for tax-exempt organizations or rescind the excise tax altogether. Failure to provide a similar exemption for pre-existing tax-exempt compensation agreements is counterintuitive to the stated goal of achieving parity between corporate entities and tax- exempt entities going forward.

We believe the tax will result in a significant hardship for credit unions that were not able to plan in advance for such costs. A number of credit union CEO's have expressed concern that the imposition of this retroactive tax, without an exemption for certain pre-existing executive compensation agreements, puts them at a fiscal disadvantage as compared to their for-profit counterparts. We have provided real life examples below that highlight the impact of the excise tax on credit unions. Please note, specific names and additional financial data have been omitted in the interest of privacy.

NASCUS • 1655 North Fort Myer Drive, Suite 650. Arlington, Virginia 22209 • P: (703) 528-8351 • F: (703) 528-3248 • www.nascus.org • info@nascus.org

- The CEO of a $200 million dollar credit union anticipates that the value of his/her employee retirement benefit plan will be approximately $1.2 million at the time of retirement. The projected excise tax liability would result in an additional $150,000 - $200,000 in unexpected costs.

- The CEO of a $225 million dollar credit union currently earns just over $200,000 in salary per year and plans to retire shortly. His/her credit union has been paying into a retirement benefit plan for more than 3 decades—well before the TCJA was enacted. The credit union now faces an unexpected excise tax liability of nearly $200,000.

- The CEO of a $375 million dollar credit union has a retirement plan with a current value of approximately $450,000. In ten years, when the CEO retires, the value of the credit union's retirement plan is projected to be $2.9 million, which will create an unexpected excise tax liability of $399,000.

- A $1.5 billion dollar credit union will incur an unplanned tax expense of over $1 million related to pre-existing retirement plan agreements that have not been afforded similar exemption treatment under the TCJA.

- A $5 billion dollar credit union has been paying into its CEO's retirement plan for 15 years and into another executive's retirement plan for 6 years. Both executives are slated to retire in the next few years and at that time the credit union will face a projected $2.6 million in excise tax liability.

As you can see, each credit union is facing a significant unexpected cost related to the tax law changes under the TCJA. The highlighted credit unions did not have the necessary notice or opportunity to develop a strategy that would help them absorb these costs nor were they provided a "grandfathering" exemption for applicable pre-existing compensation agreements to help them acclimate to the new changes without significant financial hardship.

Absorbing such unexpected costs may be exceedingly difficult for smaller and mid-sized institutions. Unfortunately, the unexpected costs will have to be recouped in some manner and will likely be borne by consumers through loss of vital financial products/services or increased pricing. We believe it is patently unfair to provide exemption relief to the corporate sector while at the same time denying similar relief to the tax-exempt sector. It is our belief that fairness and fair dealing require that applicable pre-existing executive compensation agreements for tax-exempt organizations must receive the same treatment as similar corporate sector agreements.

NASCUS appreciates the effort the committee is taking to gather additional insight into the impact of the excise tax on tax-exempt entities. If NASCUS can be of assistance in providing additional clarity on this issue, please don't hesitate to reach out to me directly or our Legislative and Regulatory Counsel, Nichole Seabron, at (703) 528-0669.

Sincerely,

Lucy Ito
President and CEO
National Association of State Credit Union Supervisors (NASCUS)
Arlington, VA

Cc: The Honorable Richard Neal, Chairman, Committee on Ways and Means
The Honorable Kevin Brady, Ranking Member, Committee on Ways and Means