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National Association of Federally-Insured Credit Unions

January 21, 2021

The Honorable Chuck Schumer
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Re: Next Phase of COVID-19 Relief

Dear Leader Schumer, Speaker Pelosi, Leader McConnell, and Leader McCarthy:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) to ask for your support for our nation's credit unions as Congress considers additional steps to provide pandemic relief and economic recovery. As you are aware, NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 123 million consumers with personal and small business financial service products. We thank you for providing credit unions with important tools to help their members in previous relief packages. Still, as you are aware, more needs to be done to help our nation recover, and we would like to take this opportunity to provide input on how credit unions are continuing to address the pandemic and share areas where further help is needed.

Measures That Will Help Credit Unions Serve Their Members

As you know, credit unions have been on the frontlines working with their members during these times of economic uncertainty. Credit unions have voluntarily implemented programs to protect their members' financial health, including skipping payments without penalty, waiving fees, low or no-interest loans, loan modifications and no interest accruals. The relief provided by Congress thus far has been helpful in these efforts. However, there are a number of areas that we believe must be addressed by Congress and the Administration in the next phase of relief legislation to ensure that credit unions have the necessary tools to continue to support their members through this crisis.

Capital and Prompt Corrective Action Flexibility

Section 4012 of the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act) provided banking regulators with the authority to temporarily lower the Community Bank Leverage Ratio (CBLR) from nine percent to eight percent. Before the pandemic, the National Credit Union Administration (NCUA) Board had expressed interest in adopting an analog to the CBLR in conjunction with its risk-based capital 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, R-Idaho, NCUA Board Chairman Rodney 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.”

Credit Union Investment Authorities

While we support relief provisions such as expanded unemployment assistance and stimulus checks, which help Americans struggling to afford basic necessities during this economic crisis, this aid causes a rise in deposits at credit unions. Such a rise can lead to a decline in the National Credit Union Share Insurance Fund’s (NCUSIF) equity ratio. Furthermore, under the FCU Act, credit unions are more limited in what they can invest in than other institutions, limiting their ability to earn a return on those increased deposits to provide more products and services to their communities. We ask that you consider authorizing additional investment authorities for credit unions to manage this influx of deposits and better serve their members. For example, currently natural person credit unions are not permitted to invest in asset-backed securities although credit union service organizations are permitted to do so. Similarly, federal credit unions are not explicitly permitted to invest in corporate bonds although some state laws permit state-chartered credit unions to do so. NAFCU encourages Congress to consider language to permit such investments to ensure the safety and soundness of the industry.

Member Business Lending (MBL) Cap Relief

The economic impact of COVID-19 and the credit needs of small businesses will be with us beyond the short-term bridge provided by the Paycheck Protection Program (PPP). While increasing the scope of other Small Business Administration (SBA) programs will help with the recovery, we need to ensure that small businesses have access to as many potential sources of capital as possible. With that in mind, we believe that you should consider legislation to exclude business loans made in response to COVID-19 relief from the credit union member business lending (MBL) cap. This proposal had bipartisan support in the House last Congress in the form of H.R. 6789, the *Access to Credit for Small Businesses Impacted by the COVID-19 Crisis Act of 2020*, and similar legislation was introduced in the Senate. On April 16, 2020, a bipartisan group of 65 representatives wrote to House leadership to urge this issue be included in future pandemic relief. Moreover, NCUA Board Chairman Hood and Board Member Todd Harper have voiced their support for MBL cap relief as a step to make it easier for credit unions to do more to help small businesses in light of the pandemic.

Changes to SBA Loan Programs

NAFCU also supports proposals to make SBA loan programs more appealing. For example, the Heroes Act proposed increasing the guaranteed portion of existing SBA 7(a) loans to 90 percent, effective until September 30, 2021. The guaranteed portion of government-backed loans is exempt from the MBL cap; hence these changes would free up additional capital for credit unions to serve small businesses.

Loan Maturity Extension

When it comes to lending, we ask that you consider legislation to provide credit unions with relief from the outdated 15-year general maturity limit found in the FCU Act for most credit union loans. Credit unions frequently hear from small businesses that a 20-year loan would be preferable in terms of a lower

monthly payment, but because of the 15-year maturity limit, small businesses often turn to banks in order to get those loans. However, with credit likely to be constrained for the foreseeable future, these loans will be harder to get. We ask that you give credit unions this flexibility so they can work with their members and provide them with the funds they need as we face the recovery ahead. Legislation from last Congress in the House (H.R. 1661) and Senate (S. 3389) would address this issue and has demonstrated bipartisan support.

Allow Credit Unions to Do More to Help Underserved Populations

Credit unions want to help the American consumer, especially in turbulent times. Too many Americans are unbanked, underbanked or underserved by financial institutions, and do not have the access that they need to financial services. Credit unions stand ready to help with financial literacy education and access to loans and other financial products, but many are limited in their ability to add underserved areas to their field of membership. Currently, only multiple common bond federal credit unions are permitted to add underserved areas to their fields of membership. Congress should amend the FCU Act to allow all credit unions to add underserved areas to their fields of membership. This is one way to help those who need it most have access to capital at no cost to the federal government. For example, many credit unions are limited on who they can serve with the aforementioned PPP. Small businesses in rural and underserved areas may have limited access to lenders. Allowing all credit unions to add underserved areas will open the door to more lenders being able to help those in rural and underserved markets. This request has bipartisan NCUA Board support and has had bipartisan support in past Congresses.

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. Congress needs to modernize provisions in the E-SIGN Act to help credit unions better meet the needs of members, while respecting social distancing requirements. We urge you to consider legislation such as S. 4159, the *E-SIGN Modernization Act of 2020*, that was introduced last Congress.

Limit Liability for Essential Businesses

With credit unions and other financial institutions deemed "essential" to remain open and serving consumers, it is important that they do not face undue legal liability from those who may seek to exploit them for financial gain concerning COVID-19. Congress should ensure that there is a liability shield for businesses that follow the law, protect their employees and serve as "good actors" to the public by providing important services, so that these businesses are not targets of demand letters and lawsuits because of it.

Existing Relief Measures That Should Be Extended or Made Permanent

Additionally, we urge you to help credit unions and their members by extending and expanding several key provisions from past relief efforts.

NCUA's Central Liquidity Facility (CLF)

We support, and ask that you make permanent, the changes to the CLF in section 4016 of the CARES Act that were subsequently extended through the end of 2021 by the year-end stimulus package. We would note that NCUA Board Chairman Hood and Board Member 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 this year. NAFCU believes strong liquidity is vital to ensuring loans to struggling families and small businesses continue to flow within the credit union system.

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.

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 the Financial Accounting Standards Board (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 of the CARES Act and subsequently extended for 2021 by the year-end stimulus package 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 Board 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."

Relief Efforts Should Be Balanced to Not Harm Credit Unions' Ability to Serve Their Members

We would like to raise concerns with some provisions that have been put forth that, although well-meaning, may have unintended consequences and could place new hardships on credit unions, hampering their ability to help members get access to credit. Enacting provisions now that harm community financial institutions could further exacerbate the current health and economic crisis.

Legislatively Mandated Blanket Loan Forbearance Is Problematic

We would caution against any additional mandated blanket loan forbearance as a response to the pandemic. The forbearance provisions in sections 4022 and 4023 of the CARES Act have raised a number of issues and concerns for credit unions, as many of the consequences of these provisions were not addressed in the Act. We are concerned that broad mandated loan forbearance that does not balance the

perspectives of financial institutions could create both operational questions and safety and soundness issues without providing regulators the flexibility to address them. If Congress should extend these forbearance programs, it must also address the related impacts that such mandated forbearance can have on financial institutions.

Credit unions are already working with members to ensure they get the relief they need, including providing forbearance and skip payments options on many types of loans based on need. Blanket mandated loan forbearance, regardless of actual need, can strain a financial institution's liquidity, making it harder to operate and provide additional credit to members. Financial institutions continue to face payment obligations on mortgage loans during a forbearance period, which compound these issues. Legislatively mandated blanket forbearance programs would cause credit unions to lose the ability to work with a member to achieve a mutually agreeable solution that protects both the member and the institution.

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.

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 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.

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.

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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 lead to significant changes in how lenders use credit information to make loans and disrupt consumer access to credit. 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.

Conclusion

We thank you for your leadership in continuing efforts at pandemic relief and appreciate the opportunity to share our thoughts. We look forward to continuing to work with you on pandemic relief and economic recovery. Should you have any questions or require any additional information, please contact me or Sarah Jacobs, NAFCU's Associate Director of Legislative Affairs, at (571) 289-7550.

Sincerely,



Brad Thaler
Vice President of Legislative Affairs

cc: Members of the U.S. Senate
Members of the U.S. House of Representatives