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**National Association of Federally-Insured Credit Unions**

July 15, 2020

The Honorable Al Green  
Chairman  
Subcommittee on Oversight & Investigations  
Committee on Financial Services  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Andy Barr  
Ranking Member  
Subcommittee on Oversight & Investigations  
Committee on Financial Services  
United States House of Representatives  
Washington, D.C. 20515

**Re: Tomorrow's Hearing, "Protecting Homeowners During the Pandemic: Oversight of Mortgage Servicers' Implementation of the CARES Act"**

Dear Chairman Green and Ranking Member Barr:

I am writing on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) to share our thoughts ahead of tomorrow's virtual hearing titled, "Protecting Homeowners During the Pandemic: Oversight of Mortgage Servicers' Implementation of the CARES Act." NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 120 million consumers with personal and small business financial service products. NAFCU and our members welcome the Subcommittee's oversight of mortgage servicers and ongoing efforts to protect homeowners in these challenging times. We would like to share how credit unions have responded to help homeowners in light of the pandemic, as well as our thoughts on a few important housing issues.

*Credit Union Response to the Pandemic*

As we have shared with you before, credit unions are keenly aware of the hardships their members are facing due to the COVID-19 pandemic and are working around the clock to proactively assist them. According to a June survey of NAFCU's member credit unions, most respondents reported that the percentage of their membership requesting mortgage forbearance assistance was 5 percent or less – similar to the results NAFCU collected in May. The majority of respondents characterized the change in delinquency rates on mortgage loans in the past month as "flat," while roughly one-quarter said they are "increasing." Fiscal support from the CARES Act, such as enhanced unemployment insurance and onetime stimulus payments, is likely a large reason why most respondents reported stable delinquency conditions in spite of high unemployment. However, as you know, much of that support will expire after July 31.

Alongside the mortgage relief provided in the CARES Act, which generally permits borrowers to obtain forbearances with minimal documentation other than an attestation of hardship, a strong majority of respondents (81 percent) indicated that they had voluntarily offered forbearance on other consumer loans. Among the most popular options offered were 90-day skip-a-pay arrangements, and longer extensions for any COVID-19 related hardship. We have also heard from many credit unions that have implemented other programs to protect their members' financial health, including waiving fees, low or no-interest loans, loan modifications and no interest accruals.

*Forbearance Issues for Mortgage Servicers*

As NAFCU has previously highlighted, credit unions have some concerns regarding the impact of sections 4022 and 4023 of the CARES Act, which provide borrowers with forbearance options for single-family and multifamily loans sold to the government-sponsored enterprises (GSEs), respectively. The four-month limitation on servicer payments of principal and interest on loans in forbearance announced by the Federal Housing Finance Agency (FHFA) on April 21, 2020 was an important step as the CARES Act did not address concerns about liquidity shortfalls in meeting these payment requirements during the forbearance period. Additionally, even though we were pleased to see the guidance from the FHFA that the GSEs can buy mortgages in forbearance, the loan level price adjustment (LLPA) fee placed on the loans will create challenges for lenders. The higher LLPA associated with selling loans to the secondary market will make it more challenging for lenders to ensure that they have ample liquidity to continue lending during a downturn and may serve to ultimately constrain new credit. We would ask the Subcommittee to urge the FHFA to further examine this LLPA fee structure and consider a lower LLPA to accommodate community lenders like credit unions and ensure they are still able to access the secondary mortgage market and make more loans to their members.

It is important that the FHFA and GSEs remain as transparent as possible with respect to expectations for servicers during these unprecedented times and offer assistance programs for servicers encountering difficulties making the required payments to the GSEs on mortgage-backed securities (MBS). We ask that you echo these requests to the FHFA, as well as consider legislative action to ensure that this health crisis does not become another housing crisis.

*FHA*

In June, the Federal Housing Agency (FHA) issued a forbearance partial indemnification policy that imposes a 20 percent first loss penalty against originators if the loan goes into forbearance before it is insured. Credit unions have a history of working with their members in a time of need and, as we highlighted above, many are implementing new policies during the current pandemic that align with the credit union credo of always putting members first. However, NAFCU believes the combination of Congressional proposals requiring blanket forbearance with lenders being assessed a financial penalty by the insurers of government-backed loans should a member request forbearance as soon as a mortgage is closed will have unintended consequences for borrowers. This could encourage some lenders to look at other factors such as whether the borrower's income could be detrimentally affected by COVID-19, which would disproportionately affect low- and moderate-income individuals, therefore harming the very borrowers that forbearance is intended to protect. We ask that you address this problematic and contradictory issue.

*Emergency QM Standard*

While not addressed in the CARES Act, we believe Congress should establish an emergency Qualified Mortgage (QM) standard with flexible requirements that permits credit unions to make prudent loans for borrowers in crisis without losing the benefit of a safe harbor that it properly considered the member's ability to repay the loan under the *Truth in Lending Act* (TILA). There are provisions of the current QM rules around determining income, liabilities and debt-to-income ratios that are unworkable in these emergency situations and, without the protection of the QM safe harbor, loans being made during the crisis could subject credit unions to litigation. The addition of an emergency QM standard can establish safe and sound lending procedures within the

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context of the current crisis and allow credit unions a measure of insulation from future litigation related to the ability-to-repay requirements.

QM Patch Extension

Furthermore, to prevent market disruptions and ensure that consumers continue to have access to safe and affordable mortgage credit, Congress must act to extend the Temporary GSE QM patch (or GSE patch) for a suitable amount of time if the Consumer Financial Protection Bureau (CFPB) declines to do so. While the CFPB issued a proposed rule to extend the patch until the effective date of their new QM rule, the timing remains uncertain. As NAFCU has shared with Congress and the CFPB, the GSE Patch has been a key factor in credit unions' ability to lend to members of their communities, especially those of low- and moderate-income. Allowing the patch to expire in the midst of the uncertainty due to the pandemic would further destabilize a housing market that is already under significant pressure.

Related to the CFPB's QM rule, the COVID-19 pandemic has also shown that the General QM definition must retain a measure of a borrower's ability-to-repay (ATR) versus the CFPB's proposed adoption of a pricing threshold. Retaining a measure of a borrower's ATR provides essential consumer protections during times of economic hardship, like the one numerous borrowers are currently experiencing.

RESPA Flexibilities

Finally, as borrowers exit forbearance, credit unions are seeking to transition borrowers back into a paying status that the borrower can afford. The GSEs have created a deferral program to assist in this process, and the CFPB has issued a temporary exception to Regulation X which implements the *Real Estate Settlement Procedures Act* (RESPA). However, not all borrowers will be able to qualify for this deferral program and other options, such as disaster modifications, may be necessary. While the GSEs do not require complete paperwork to exercise these disaster options, current regulations require that extensive paperwork be obtained anyway. RESPA should contain an exception to unnecessary and burdensome regulations for disaster-related programs that move delinquent borrowers into current status so that credit unions can work with their members quickly and without being encumbered by paperwork that the credit union and the GSEs do not require to offer these options.

We thank you for your leadership and ongoing efforts to support homeowners as well as financial institutions during these uncertain times. We appreciate the opportunity to share our input and look forward to continuing to work with the Subcommittee on these issues. 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 Subcommittee on Oversight & Investigations