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National Association of Federally-Insured Credit Unions

April 7, 2020

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

The Honorable Charles E. Schumer
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

Dear Leader McConnell, Speaker Pelosi, Leader Schumer, 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 designed to provide pandemic relief and economic recovery. Credit unions are working with consumers during these times of economic uncertainty. As you are aware, 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.

As Congress and the Administration take steps in crafting the next pandemic relief package, we urge you to keep the concerns of credit unions top of mind. We would like to share our thoughts with you in three areas: 1) fixes or updates to earlier relief efforts to address the concerns of credit unions, 2) additional relief measures to help credit unions meet the needs of members in light of the pandemic, and 3) the importance of not enacting proposals that will harm credit unions or their ability to serve their members in the economic uncertainty ahead. We hope you will address our asks as you craft future relief measures.

Updates Needed to Earlier Phases of COVID-19 Relief

We thank you for your leadership in already enacting three phases of pandemic response and relief. A number of measures in these phases stand to help credit unions and their members deal with these challenging economic times. As the provisions from these relief efforts have been implemented, there are areas where we would encourage you to revisit to improve upon the measures for credit unions.

SBA Paycheck Protection Program

Credit unions are eager to help their members through the Paycheck Protection Program, the new Small Business Administration (SBA) lending program created by section 1102 of the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act). NAFCU is pleased that Treasury and the SBA are taking steps to provide guidance and clarity to financial institutions. However, more continues to be needed as credit unions report difficulty in accessing the SBA not only to get approval to participate, but also to gain access in order to process these loans. **Congress must ensure that Treasury and the SBA have the tools and**

resources to properly administer this program and to inform lenders on how to use the program. Furthermore, Treasury and SBA must make improvements in the guidance to ensure that the concerns of credit unions and other lenders about uncertainty, institutional liability, and costs to administer the program are addressed.

Forbearance under Sections 4022 and 4023 of the CARES Act
NAFCU would like to highlight credit unions' concerns with section 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. Credit unions stand ready to help their members remain in their homes but may also be facing difficulties handling the large volume of forbearance requests. Credit unions are experiencing many members submitting requests for forbearance as countless individuals are furloughed or laid-off from their jobs as a result of the COVID-19 pandemic and facing financial hardship. However, credit union mortgage servicers are contractually obligated to continue to make payments to investors on the interest, with respect to Freddie Mac mortgages, and interest and principal, with respect to Fannie Mae mortgages, on mortgage-backed securities (MBS), based on a calculation of the unpaid principal balance of the loan after the last payment was received from the borrower. The CARES Act did not address these issues. NAFCU has asked the Federal Housing Finance Agency (FHFA) to direct the GSEs to be 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 mortgages and 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 financial crisis. **Congress should enact measures to address this concern, including directing insurance companies to keep hazard insurance policies in place during a period of forbearance, directing the National Flood Insurance Program (NFIP) to keep flood insurance in place during a forbearance, and addressing the issue of property tax payments during a period of forbearance,** such as the Federal government stepping in to make required payments to local governments during the forbearance period instead of putting the burden on the financial institution**.** We are concerned about proposals for mandated blanket loan forbearances as a response to the pandemic.

Parity for Credit Unions with Community Bank Provisions in the CARES Act
NAFCU asks that you consider providing credit unions with parity on a couple of provisions in the CARES Act that provide community banks with additional relief in order to weather the pandemic. Section 4008 of the CARES Act appears to allow the Federal Deposit Insurance Corporation (FDIC) to establish an unlimited maximum guarantee, whereas the "equivalent" provision for the National Credit Union Administration (NCUA) appears to only apply to noninterest bearing transaction accounts. **We ask that you provide 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.** Furthermore, section 4012 of the CARES Act provides banking regulators with the authority to temporarily lower the Community Bank Leverage Ratio (CBLR) from 9 percent to 8 percent. **NAFCU asks that you consider similar capital relief for credit unions**, so that credit unions may loan more to their members who need it.

<u>Additional Relief Measures Will Help Credit Unions Continue to Serve Their Members</u>

Credit unions are working with their members as they face challenges relating to the pandemic. This includes taking steps to notify members that the credit union is there for them during these difficult times and also warning them about bad actors who will seek to commit fraud to take financial advantage of members. A NAFCU survey of members finds that credit unions are taking steps to provide financial relief to members during the pandemic, including offering payment accommodations such as deferred or skip payment plans. Many credit unions are working through challenging conditions in providing these services, as they balance stay-at-home orders with being an essential service for their members. There are important steps that Congress can take to help credit unions do more to serve the American consumer and small businesses during these uncertain times and the economic recovery ahead. We urge Congress to take the following steps to provide relief to credit unions and their members in Phase IV:

<u>Allow Credit Unions to Do More to Help Small Businesses</u>
Credit unions face arbitrary restrictions in the *Federal Credit Union Act* (FCU Act) on the ability to offer member business loans (MBLs). In 1998, Congress codified the definition of an MBL and limited a credit union's member business lending to the lesser of either 1.75 times the net worth of a well-capitalized credit union or 12.25 percent of total assets.

Congress must increase access to lending for our nation's small businesses by amending the FCU Act to provide credit unions greater relief and flexibility from the MBL cap. There are multiple approaches to accomplish this. First, Congress could raise the cap to 20% of assets of the credit union. Such an approach has received bipartisan support in previous Congresses. Second, Congress could raise the threshold for what counts as a business loan toward to the cap (currently $50,000) to a higher level (such as $200,000), which could open up additional lines of credit to small and micro businesses. This $50,000 threshold has not been updated since the cap was established in 1998 and has eroded in value over time. Modernizing it now would allow more credit unions to help small business by offering important lines of credit as they seek to recover.

Third, Congress could exempt loans to our nation's veterans from the cap. Bipartisan legislation is pending in the House (H.R. 2305) and the Senate (S. 2834) that would provide this relief. Finally, relief could also be provided by exempting all government-backed loans (such as SBA loans) from the cap or fully guaranteeing all SBA loans. Currently, only the guaranteed portion of the loan is exempt from the MBL cap. Such a step would allow credit unions to do more with the new $1 million SBA express loan limit established in the CARES Act.

<u>Provide Capital Relief to Credit Unions</u>
Credit unions remain well-capitalized as an industry and stand ready to help in the economic recovery. However, pending new capital requirements from regulators could stymie these efforts. Even though the Financial Accounting Standards Board (FASB) has delayed its new Current Expected Credit Loss (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 the CARES Act is a good first step. Still, CECL will remain a burden on credit unions as the economy seeks to recover. 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. If credit unions are not exempted, further delaying implementation of this standard could help provide additional clarity and relief for credit unions.

General regulatory flexibility for well-capitalized credit unions can also help these institutions work with their members to provide much-needed relief without additional "red-tape" getting in the way. In general, given statutory capital requirements and NCUA's capital rules, the credit union industry is better capitalized than banks. Still Congress created the CBLR, an "off-ramp" for community banks that meet a certain leverage ratio as part of S. 2155. As noted above, this relief was also enhanced for community banks in the CARES Act. **Congress needs to amend the FCU Act to enact a similar capital "off-ramp" provision for credit unions and direct the NCUA to provide capital flexibility by temporarily lower credit union leverage ratios.** Doing so now can go a long way to giving credit unions greater flexibility to meet the needs of their members while ensuring safety and soundness.

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. **Congress should amend the FCU Act to allow all credit unions to add underserved areas to their field of membership**. This is one way to help those who need it most have access to capital while not costing the federal government. For example, many credit unions are limited on who they can serve with the aforementioned SBA Paycheck Protection Program. 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.

Modernize Outdated Governance Provisions Found in the Federal Credit Union Act

A number of provisions relating to the governance of federal credit unions are outdated and need modernizing. For example, provisions requiring an in-person member meeting are particularly concerning during these times of COVID-19 uncertainty. At a time when few people may want to congregate in large groups, an outdated provision requiring a group meeting for actions that can be handled by a board or virtually only serves to put credit union volunteers and leadership at risk. A number of credit unions are already trying to change plans for annual member meetings in light of COVID-19. There is already bipartisan legislation pending in the Senate, S. 3323, that would remove the requirement for a special in-person meeting of the members of a credit union and replace it with board action to expel a member for threats or criminal acts against the credit union, its employees or its members. **We urge Congress to enact S. 3323 to address this outdated in-person meeting requirement.** Such a measure is a common-sense step Congress can take to help credit unions in the current environment.

Raise the 15-year Maturity Limit on Certain Credit Union Loans

Credit unions have a long track record of providing provident credit to members during times of uncertainty. However, as noted above, outdated provisions in the FCU Act sometimes hamper those efforts. This is the case with the 15-year general maturity limit found in the FCU Act for most credit union loans (with certain exceptions, such as owner-occupied mortgage loans). This limit hampers credit unions' ability to provide certain products, such as student loans and mortgage loans to those who may be looking to take advantage of great rates and purchase a future home, such as members of the military who may be stationed out of an area. The ability to extend loan maturities can also help credit unions lower monthly payments to their members during the economic recovery. Bipartisan legislation to help on this issue has been introduced in both the House (H.R. 1661) and the Senate (S. 3389). **We urge Congress to enact this loan maturity relief for credit unions.**

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% 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.**

Establish an Emergency Flexible QM Standard

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

Expand the Definition of Community Financial Institution in the Federal Home Loan Bank Act

NAFCU urges Congress to expand the definition of Community Financial Institution (CFI) in the Federal Home Loan Bank (FHLB) Act to include credit unions and to raise the asset threshold to $10 billion. Currently, the FHLB Act only recognizes FDIC-insured institutions up to $1.224 billion in assets as CFIs. Under the Act, a CFI can pledge small business, small farm, small agri-business, and community development loans to a FHLB as expanded options of collateral for advances. Including credit unions in this definition and raising the threshold to $10 billion will provide greater lending capacity for a number of credit unions.

Provide Emergency Funding for CDFI Institutions and the CDRLF

The Community Development Financial Institutions (CDFI) Fund and the NCUA's Community Development Revolving Loan Fund (CDRLF) are important tools for credit unions to have access to funds to help those underserved and lower-income areas. **NAFCU urges Congress to increase funding for the CDFI and CDRLF programs.** Doing so would allow more credit unions to access monies to provide specific programs to help their members. For example, CDRLF funds allow NCUA to provide technical assistance grants to credit unions serving low-income communities. Increasing these grants can help ensure that these credit unions have work-from-home infrastructure in place that is appropriately secure during social distancing measures.

Have Federal Financial Regulators Provide Immediate Regulatory Relief
Federal financial institution regulators have the ability to act immediately in a number of areas to help credit unions. **We urge Congress to use its oversight authority to call on regulators to do more**. Examples of what can be done include:

- NCUA moving to extended examination cycles for all credit unions in good standing. Currently credit unions below $1 billion in good standing are eligible for extended exam cycles. Extending this to all credit unions could provide relief. With so many credit unions now having employees telework and limiting person-to-person interaction, at the very least, on-site examinations by all regulators should be put on hold until the crisis is past.
- Allowing credit unions to conduct all board meetings or member meetings virtually. In-person meetings would likely violate the current 10-person limit recommended by the CDC. With comments that this crisis could extend into the summer, a simple delay of required business is not always an option. Immediate action to allow virtual meetings would provide relief.
- Temporarily halting rulemakings unrelated to COVID-19. Adopting rules not directly related to responding to the coronavirus can take away credit union resources from serving members at this time of need.

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 don’t face undue legal liability from those who may seek to exploit them for financial gain concerning COVID-19. **Congress should enact legislation to ensure that essential businesses that are serving as “good actors” to the public by providing important services are not targets of demand letters and lawsuits because of it.**

Assist Associations in Relief Efforts
Finally, as you consider measures to help various industries and small businesses, such as potential payroll tax relief, NAFCU also urges you to ensure such steps cover not only credit unions, but also associations. Many conferences and trainings for the industry stand to be impacted by COVID-19 and face cancellation or decreased attendance. Insurance plans for travel and events often do not cover cancellations for pandemics, which increases the cost of COVID-19 on the industry as a whole. **Congress should ensure that any relief package address this important topic of association relief.**

Oppose Provisions That Will Harm Credit Unions and Their Members

We would urge Congress to reject any idea, even if well-meaning, that could place new hardships on credit unions and hamper their ability to help members get access to credit. Enacting provisions now that harm community financial institutions could exacerbate the current health crisis into a new financial crisis.

Oppose Any Effort to Extend Interchange Price Caps

We are dismayed to learn that some groups have proposed extending debit interchange price caps to credit cards as a response to the crisis. When the price cap was set on debit interchange rates in the Dodd-Frank Act, the retail industry did not follow through on their promise to pass on interchange fee savings to their customers. Now they are asking for the same failed price controls to be extended to credit card transactions in response to the pandemic. This would cause irreparable harm to credit unions and could damage the availability of credit to consumers.

The electronic payments system is a two-sided market, with consumers on one side and merchants on the other. Both sides benefit from the arrangement, with card networks setting interchange rates based on the cost of doing business, and the benefit to consumers and merchants. The credit card system allows consumers to purchase goods and services from merchants that they may not be able to otherwise. In the wake of the pandemic, many merchants are requesting cashless payments for employee safety. This is evidence that the electronic payments system offers real value to merchants and consumers alike. Ultimately, merchants receive far more value from accepting electronic payments than they pay in interchange fees. Any new caps on interchange fees would only hurt community institutions such as credit unions and the American consumer. **NAFCU opposes these efforts and we urge you to reject proposals to extend interchange price caps.**

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 have affirmatively consented to. 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 to 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 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 to consumers than benefit.**

Legislatively Mandated Blanket Loan Forbearance Is Problematic

We are concerned about proposals for mandated blanket loan forbearances as a response to the pandemic. As noted above, the forbearance provisions in sections 4022 and 4023 of the CARES Act raised a number of issues and concerns for credit unions that were not addressed in the bill. Broad mandated loan forbearance could create both operational questions and safety and soundness issues for financial institutions and not give regulators the flexibility to address them. Credit unions are already working with members to ensure they get the relief they need, including providing forbearance and skip payments options. Blanket mandated loan forbearance, regardless of actual need, can strain income to a financial institution, making it harder to operate and provide additional credit to members. Many existing requirements often remain on the financial institution during a forbearance period. These requirements stand to compound issues for financial institutions during periods of forbearance. 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. **We caution Congress against enacting additional blanket loan forbearance provisions that could create additional hardships and challenges for credit unions. NAFCU would oppose such efforts.**

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 disrupt consumer access to credit. Blanket suppression of adverse information could lead to significant changes in how lenders use credit information to make loans. **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.

As Congress considers the next steps in the legislative effort to provide relief and respond to the pandemic, we strongly urge you to address the concerns of the nation's credit unions and the 120 million Americans that they serve that we have outlined in this letter. In order to assist you in these efforts, we have attached suggested legislative language to this letter. During times of economic crisis, credit unions always focus on their members and doing all that they can to help. It is critical that Congress ensure that measures in Phase IV and beyond assist in this effort.

We thank you for the opportunity to share our thoughts and 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 Brad Thaler, NAFCU's Vice President of Legislative Affairs, at 703-842-2204 or bthaler@nafcu.org.

Sincerely,

B. Dan Berger
President and CEO

Cc: Members of the United States Senate
Members of the U.S. House of Representatives

Attachment