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National Association of Federally-Insured Credit Unions

August 31, 2020

The Honorable James E. Clyburn
Chair
Select Subcommittee on the Coronavirus Crisis
United States House of Representatives
Washington, D.C. 20515

The Honorable Steve Scalise
Ranking Member
Select Subcommittee on the Coronavirus Crisis
United States House of Representatives
Washington, D.C. 20515

Re: Tomorrow's Hybrid Hearing with Treasury Secretary Steven T. Mnuchin

Dear Chair Clyburn and Ranking Member Scalise:

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 ahead of tomorrow's hybrid hearing with Treasury Secretary Steven T. Mnuchin regarding the Administration's response to the economic crisis caused by the COVID-19 pandemic. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve nearly 121 million consumers with personal and small business financial service products.

Credit unions are keenly aware of the hardships their members are facing due to the COVID-19 pandemic and are working with them during these times of economic uncertainty. As we have shared with you before, 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. However, there are a number of areas that we believe must be addressed by Congress and the Administration in Phase 4 relief legislation to ensure that credit unions have the necessary tools to support their members through this crisis. Key among these are the inclusion of H.R. 7777, the *Paycheck Protection Small Business Forgiveness Act*, and the extensions of the changes to the National Credit Union Administration's (NCUA) Central Liquidity Facility (CLF) and Troubled Debt Restructuring (TDR) provisions from the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act). These and other issues for consideration are outlined in more detail below.

CARES Act Relief Measures That Should Be Extended and/or Modified

Section 1102: SBA Paycheck Protection Program

Credit unions have stepped up to ensure small businesses in their communities are taken care of during these uncertain times, and their response through the Paycheck Protection Program (PPP), the Small Business Administration (SBA) lending program created by section 1102 of the CARES Act, has been tremendous. We were pleased to see Congress extend this program through August 8th.

However, NAFCU believes it is important to simplify the loan forgiveness process and application for smaller PPP loans. While credit unions are working with their members to assist them with the current loan form, the complexity of the forgiveness rules and application is posing challenges for many small businesses who may not have the staff or expertise for such a complex application, especially with the current economic challenges. As such, NAFCU is supportive of a simplified loan forgiveness process

for PPP loans under a \$150,000 threshold, such as proposed in H.R. 7777, the *Paycheck Protection Small Business Forgiveness Act*, and we urge you to add this language to any final pandemic relief legislation.

Section 4016: NCUA's Central Liquidity Facility

We support, and ask that you make permanent, the changes to the CLF in section 4016. We would note that NCUA Chairman Rodney Hood and Board Member Todd 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 the end of 2020, when the changes are currently set to expire. NAFCU believes strong liquidity is vital to ensuring loans to struggling families and small businesses continue to flow within the credit union system.

Section 4013: Troubled Debt Restructuring (TDR)

NAFCU appreciates the provisions in this section giving the NCUA broad authority to suspend Generally Accepted Accounting Principles (GAAP) requirements with respect to loan modifications related to COVID-19 that would otherwise be categorized as TDRs. We urge extension of this flexibility to at least December 31, 2021 to allow any post-forbearance workouts to be included in the applicable period. We would also support additional legislative steps to provide relief in this area.

Section 4008: 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.

Section 4014: 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 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 section 4014 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 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."

Section 4012: Community Bank Leverage Ratio

Section 4012 of the CARES Act provides banking regulators with the authority to temporarily lower the Community Bank Leverage Ratio (CBLR) from nine percent to eight percent. Before the pandemic, the 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, NCUA Chairman 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.” Any extension of the CBLR must also include this temporary capital flexibility for credit unions, so that credit unions may loan more to their members who need it.

Additional Relief Measures Will Help Credit Unions Continue to Serve Their Members

As you are aware, credit unions are working with their members as they face difficulties related to the pandemic. At the same time, credit unions are facing significant challenges themselves as they balance stay-at-home orders with being an essential service for their members. There are several measures that have been introduced or have received broad support in Congress that can be enacted to help credit unions do more to serve the American consumer and small businesses during these uncertain times and the economic recovery ahead. We would urge their inclusion in the final package.

Allow Credit Unions to Do More to Help Small Businesses

NAFCU supports legislation pending in the House, H.R. 6789, the *Access to Credit for Small Businesses Impacted by the COVID-19 Crisis Act of 2020*, which would provide temporary relief from the credit union member business lending (MBL) cap for loans to help small businesses recover from the COVID-19 crisis. We urge you to include this legislation in the next coronavirus relief package.

Provide Emergency Funding for CDFIs 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 helping underserved and lower-income communities. These programs can assist CDFI-certified and low-income designated credit unions in establishing specific programs to assist the most financially vulnerable consumers and ensure their own resiliency and survival during our current economic and public health emergency. NAFCU urges Congress to increase funding for the CDFI and CDRLF programs. Providing \$1 billion in emergency funding for the CDFI Fund would allow more credit unions to access monies for specific programs to help members who need it most. NAFCU appreciates that this funding was included in the House's Phase 4 relief bill, the *Health and Economic Recovery Omnibus Emergency Solutions Act* (HEROES Act) and that 37 Senators signed a letter urging this level of funding. We would also urge you to consider measures to make it easier for credit unions to become a CDFI.

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. We urge inclusion of S. 4159, the *E-SIGN Modernization Act of 2020*, in the relief package.

Limit Liability for Essential Businesses

With credit unions and other financial institutions deemed “essential” to remain open and serve consumers, it is important that they do not face undue legal liability from those who may seek to exploit them for financial gain related to the COVID-19 pandemic. Congress should enact legislation to ensure that essential businesses, serving as “good actors” to the public by providing important services, are not the targets of demand letters and lawsuits.

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 and economic 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 Wall Street Reform and Consumer Protection 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 reduce 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 to which they 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.

Legislatively Mandated Blanket Loan Forbearance Is Problematic

We are concerned about proposals for mandated blanket loan forbearances as a response to the pandemic. 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 without providing regulators the flexibility to address these concerns. 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 loan payment requirements often fall on the financial institution during a forbearance period. These requirements stand to compound challenges for financial institutions during periods of forbearance. Legislatively mandated blanket forbearance programs would deprive credit unions of 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.

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.

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 and 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.

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.

Ensure Big Tech Entrants to Financial Services Follow the Rules of the Road

Finally, we are concerned about the continued expansion of Big Tech into the financial services sphere. This includes recent actions by the FDIC to approve new Industrial Loan Company (ILC) charters and the possibility that more may be on the way. We support calls for a moratorium on ILC charter approvals

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at this time, so that this issue can be properly examined by Congress and regulators outside of the pandemic and would support such a moratorium being included in the next phase of relief.

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 Sarah Jacobs, NAFCU's Associate Director of Legislative Affairs, at (571) 289-7550 or sjacobs@nafcu.org.

Sincerely,

A handwritten signature in cursive script that reads "Brad Thaler".

Brad Thaler

Vice President of Legislative Affairs

cc: Members of the United States House of Representatives