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National Association of Federally-Insured Credit Unions

July 22, 2020

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Re: Tomorrow's Hearing, "The HEROES Act: Providing for a Strong Economic Recovery from COVID-19"

Dear Chairwoman Waters and Ranking Member McHenry:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) to share with you our thoughts on H.R. 6800, the *Health and Economic Recovery Omnibus Emergency Solutions Act* (HEROES Act) ahead of tomorrow's hybrid hearing, "The HEROES Act: Providing for a Strong Economic Recovery from COVID-19." We thank you for your leadership on these measures in response to the COVID-19 pandemic. 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 we have shared with you previously, 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. First and foremost, credit unions are concerned about the health and safety of their staff and members. Many are taking steps to help minimize person-to-person interaction, such as limiting staff travel, encouraging staff to telework as much as reasonably possible, and reminding members of online and mobile banking resources as well as drive through windows, if available. Furthermore, many credit unions have 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.

Credit Unions Play an Important Role in Helping Small Businesses with the PPP

Credit unions have also stepped up to ensure small businesses in their communities are taken care of during these uncertain times. The Small Business Administration's (SBA) Paycheck Protection Program, created by Title I of the CARES Act, has been very successful and an important tool that credit unions have used to help their small business members, and we thank you for including credit unions as lenders in this program. Still, even with the success of the PPP, there remain some issues that we believe need to be addressed such as the simplification of the loan forgiveness process.

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. We were pleased to see the SBA take steps to address this with the creation of the 3508EZ form, but NAFCU members report that they do not see a huge difference in terms of processing the application as they still need to verify expenses and supporting documentation to ensure that they are meeting the lender requirements.

An analysis of SBA's PPP data shows that credit unions have been making PPP loans in amounts much lower than the national average, with the credit union average PPP loan just over $50,000. As such, NAFCU is supportive of a simplified loan forgiveness process for PPP loans under a $150,000 threshold, such as proposed in S. 4117, the *Paycheck Protection Small Business Forgiveness Act*, and we urge you to add this language to any final pandemic relief legislation. This bipartisan proposal would simplify the loan forgiveness process for loans under $150,000 to a one-page form. Loans under $150,000 account for 86.5 percent of PPP recipients but only account for approximately 27 percent of the funds disbursed by the SBA. This level would cover most credit union loans, the vast majority of which have been to smaller businesses that could most benefit from this automatic forgiveness. A smaller PPP loan is less likely to pose a high risk of fraud so the benefits to small businesses and lenders of providing this automatic or simplified forgiveness significantly outweigh the potential risks. Moreover, such a simplified forgiveness process frees up human capital at a time when credit unions and small businesses may be short-staffed due to ramifications of COVID-19.

Understandably, the forgiveness application is one mechanism to uncover fraudulent activity; however, there are others and the SBA retains the right to review a borrower's loan documents for six years after the date the loan is forgiven or repaid in full. NAFCU would urge Congress and the SBA to improve the forgiveness process by considering automatic loan forgiveness for loans below a $150,000 threshold.

As for changes to the PPP contemplated by the HEROES Act, NAFCU appreciates that it would set aside at least 25 percent of appropriations for loans made to eligible recipients with 10 or fewer employees, as well as require any amounts returned due to cancellation of PPP loans to go to covered loans made to recipients with 10 or fewer employees. We also appreciate the steps the HEROES Act takes to set aside PPP funds for community financial institutions as well as the $1 billion allocated for technical assistance for community financial institutions with less than $10 billion in assets to update their systems and efficiently provide loans. These set asides will help ensure small businesses can benefit from this program.

As we have shared with you before, many credit unions report that small businesses turned to them after being turned away from other lenders for a PPP loan. Even more strikingly, a NAFCU survey found that over 75 percent of responding credit unions' approved PPP loans went to self-employed/gig workers or businesses with under 10 employees. All of this goes to show that credit unions are providing small dollar loans to smaller businesses, some of which have no other financial institution to turn to. We would appreciate these expanded set asides, especially if Congress modifies the PPP to allow businesses in certain industries to receive a second loan. While credit unions would want to serve these businesses regardless of formal set asides, we want to avoid repeating the scenario where funding runs out and only the largest of small businesses have received loans.

Other HEROES Act Measures that Will Help Credit Unions Serve Their Members

Changes to SBA Loan Programs
NAFCU also supports many of the changes that the HEROES Act would make to SBA loan programs other than the PPP. For example, the Act proposes increasing the guaranteed portion of existing SBA loans to 90 percent, effective until September 30, 2021. As you know, credit unions face arbitrary restrictions in the *Federal Credit Union Act* (FCU Act) on the ability to offer member business loans (MBL). 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. The Act would also increase the maximum loan amount for 7(a) and 504 loans to $10 million until September 30, 2021, allowing credit unions to do more to help small businesses in the months ahead as they seek to recover from this crisis.

Additional CDFI Funding
We are pleased to see the inclusion of $1 billion in emergency funding for the Community Development Financial Institutions (CDFI) Fund, which is an important tool for credit unions to have access to funds to help those in underserved and low- and moderate-income areas. This additional funding will allow more credit unions to access monies to provide specific programs to help their members. We also urge you to consider measures to make it easier for credit unions to become certified as a CDFI, including streamlining the application and certification process, which has not been overhauled in many years.

As of the end of 2019, there were approximately 292 CDFI-designated credit unions, constituting about 27 percent of all certified CDFIs. Furthermore, according to the National Credit Union Administration (NCUA), there are 526 federally-insured minority depository institution (MDI) credit unions that serve 3.9 million members (as of June 30, 2019). CDFI credit unions are diverse institutions ranging in asset size from under $2 million to over $10 billion in assets, with a focus on addressing local needs and building local economies. Credit unions have a strong record of being engaged in underserved areas and can help to stabilize these communities during this difficult time.

Other Proposals that Can Help Credit Unions Serve Their Members

In addition to the proposals included in the HEROES Act that are mentioned above, there are additional measures that we believe must be included in any final "Phase 4" pandemic relief bill:

MBL Cap Relief
Looking ahead, most experts agree that 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 PPP. While increasing the scope of other 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 must expand your proposal to include legislation to exclude business loans made in response to COVID-19 relief from the credit union MBL cap. This proposal has bipartisan support in the House in the form of H.R. 6789, the *Access to Credit for Small Businesses Impacted by the COVID-19 Crisis Act of 2020*. On April 16, 2020, a bipartisan group of 65 representatives wrote to you to urge you to address this issue in "Phase 4." Moreover, NCUA Chairman Rodney

Hood, and Board Members Todd Harper and J. Mark McWatters have all 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.

Loan Maturity Extension
When it comes to lending, we ask that you consider expanding your proposal to include 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. H.R. 1661 would address this issue and has demonstrated support in the House with 21 bipartisan cosponsors.

Capital and Prompt Corrective Action (PCA) Flexibility
NAFCU is supportive of the NCUA's request to provide more capital relief to credit unions during COVID-19. A temporary reduction in capital standards by reducing 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 would provide relief for credit unions on par to what community banks received in changes to the Community Bank Leverage Ratio in the CARES Act.

Additionally, we support NCUA's request to grant the NCUA Board the authority to waive the requirements of a net-worth restoration plan for credit unions that are less than adequately capitalized for up to 180 days. The current pandemic may lead to temporary deterioration in net worth ratios at a small number of credit unions. We appreciate NCUA Chairman Hood's recognition that providing greater flexibility in meeting capital restoration requirements could reduce administrative burdens during a time of high operational stress.

Additional CDRLF Funding
As you consider additional relief efforts, we encourage you to consider increased funding for NCUA's Community Development Revolving Loan Fund (CDRLF). In addition to the CDFI Fund, the CDRLF is an important tool for credit unions to serve low income areas. NCUA Board Member Harper has specifically called for at least $10 million more for grants in 2020 to help low-income credit unions.

Liquidity for Credit Unions
We ask that you consider making the changes to the Central Liquidity Facility (CLF) in the CARES Act permanent. We would note that NCUA 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 the end of 2020 when the changes are set to expire.

Additionally, we support a statutory change to grant temporary authority to the NCUA Board to allow federally chartered credit unions the ability to lend to other credit unions. NAFCU believes strong liquidity is vital to ensuring loans to struggling families and small businesses continue to flow within the credit union system.

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.

Underserved Areas
NAFCU asks that you allow credit unions to do more to help underserved populations. 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 fields of membership. Allowing all credit unions to add underserved areas to their fields of membership is one way to help those who need it most have access to capital without burdening the federal government. This request has bipartisan NCUA Board support.

HEROES Act Should Be Balanced to Not Harm Credit Unions' Ability to Serve Their Members

Finally, we would like to raise concerns with some of the provisions in the HEROES Act that, although well-meaning, may have unintended consequences, 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 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.

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.

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.

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.

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

Brad Thaler
Vice President of Legislative Affairs

cc: Members of the U.S. House Committee on Financial Services