



3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
f: 703.524.1082
nafcu@nafcu.org | nafcu.org

National Association of Federally-Insured Credit Unions

September 30, 2020

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: Consideration of the House Amendment to the Senate Amendments to H.R. 925, The Heroes Act

Dear Speaker Pelosi and Leader McCarthy:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) to share with you our thoughts on the updated version of The Heroes Act, as found in the House Amendment to the Senate Amendments to H.R. 925, ahead of floor consideration and a potential vote tomorrow. 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 121 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. Furthermore, NAFCU members report hearing from their small business members concerns about the time and cost of correctly completing the forgiveness application. Many of those small businesses have had to seek outside assistance to help them with the form. Unfortunately, the time and money spent on forgiveness paperwork takes away from a small business's ability to serve its customers and continue to be able to pay its employees – a direct contradiction to the spirit of the PPP, which was designed to provide simplified aid to those in dire need of assistance.

An analysis of SBA's PPP data shows that credit unions made PPP loans in amounts much lower than the national average, with the credit union average PPP loan approximately \$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 H.R.7777, the *Paycheck Protection Small Business Forgiveness Act*. 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 87 percent of PPP recipients but only account for 28 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.

NAFCU was pleased to see that the updated version of The Heroes Act includes simplified forgiveness, with automatic forgiveness for loans under \$50,000 and a streamlined application for loans of \$50,000 to \$150,000. However, we still urge you to consider the approach taken by H.R.7777. 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 the bill would authorize a second round of PPP loans to the hardest hit small businesses – those with less than 200 employees and losses of at least 25 percent year-over-year due to the pandemic. NAFCU members report that many of their small business members need additional support to weather the pandemic. Furthermore, we also appreciate the steps The Heroes Act takes to set aside PPP funds for distribution by community financial institutions, which we believe is crucial to ensure all small businesses are served.

As we have shared with you before, according to a NAFCU survey, 87 percent of NAFCU members reported providing PPP loans to new members and businesses that were turned away by other lenders and came to their credit union to apply for a PPP loan. Moreover, compared to other types of lenders, credit unions disproportionately helped the smallest of small businesses. Not only

did credit unions make PPP loans in amounts much lower than the national average, but according to SBA's PPP data, a full 70 percent of credit union PPP loans went to businesses with less than five 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 greatly appreciate the expanded set asides proposed by The Heroes Act, especially considering the provision for a second round of PPP loans. 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 7(a) 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.

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.

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.

Extension of CARES Act Relief Provisions

Additionally, we urge you to help credit unions and their members by expanding The Heroes Act to include extension and expansion of several key provisions from the CARES Act:

- ***Section 4016: NCUA’s Central Liquidity Facility (CLF)***

We support, and ask that you make permanent, the changes to the CLF in section 4016. 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 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. An extension of this provision through the end of 2021 is also included in the aforementioned H.R.6789.

- ***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. NAFCU also supports of H.R.7913, the *Financial Institution Forbearance Act*. This legislation, proposed by House Financial Services Committee Member Blaine Luetkemeyer, R-Mo., extends and expands the TDR relief provisions put into effect by the CARES Act.

- ***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 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.”

- ***Capital and Prompt Corrective Action (PCA) Flexibility***

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 FCU Act’s PCA provisions. In his April 29, 2020 letter to Senate Banking Committee Chairman Mike Crapo, NCUA Board 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.”

The 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 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.

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 Honorable Nancy Pelosi, The Honorable Kevin McCarthy

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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. House of Representatives