Credit Union National Association
CUNA

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The Honorable Mike Crapo
Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, DC 20510

Dear Chairman Crapo and Ranking Member Brown:

On behalf of America's credit unions, I am writing regarding the Quarterly CARES Act Report to Congress. The Credit Union National Association (CUNA) represents America's credit unions and their 120 million members. We request this letter be added to the record of the hearing, and we appreciate your consideration of our views.

The Department of Treasury (Treasury) and Small Business Administration (SBA) have taken significant actions to stabilize the economy during the COVID-19 pandemic. The pandemic has led to economic uncertainty for individuals and businesses of all types. Changes to regulation and the creation of new lending programs have and will continue to help individuals and business weather the storm.

Paycheck Protection Program

The SBA and Treasury's implementation of the Paycheck Protection Program (PPP) left much to be desired as credit unions and other lenders experienced periodic inability to access to the E-tran system and occasional unresponsiveness to credit unions asking for assistance.

Despite these issues, credit unions were proud to offer PPP loans to help small business owners recover from the impact of the pandemic, facilitating more than 170,000 loans that averaged just $49,000. Through this program, credit unions helped Main Street America including businesses like non-profit organizations that are helping the minority communities in the cities of Wilmington and minority owned businesses in the lower east side of New York such as a small deli, tiny photography businesses, and the neighborhood bakery, among many others.

While PPP lending has concluded, there are a number of steps that SBA should take if additional funds become available. SBA should improve their national and regional operation in order to provide more timely feedback to lenders and borrowers, including lender prioritization guidance, official guidance formalizing the use of PPP forms and guidance on the loan purchasing process. Furthermore, the SBA should issue guidance and forms to reflect that privately insured state-chartered credit unions are eligible to lend through the program.

Now that the PPP program has transitioned to the loan forgiveness phase, credit unions are concerned that the loan forgiveness process is overly complicated for most businesses. The process is so complex that most businesses may need to retain counsel to navigate the application process – an expense many of the smallest businesses cannot afford during normal times, much less in this crisis.

In order to allow America's small business owners and Main Street financial institutions to remain focused on serving their communities rather than jumping through burdensome regulatory hurdles, we urge Congress to implement policy that provides automatic loan forgiveness for PPP loans. We strongly support H.R. 7777, the Paycheck Protection Program Small Business Forgiveness Act and its Senate companion, S. 4117. This legislation would provide forgiveness for PPP loans of $150,000 or less if the borrower submits an attestation form to the lender. It also ensures that the lender will be held harmless from any enforcement action if the borrower's attestation contained falsehoods.

Additionally, credit unions have been concerned about PPP related liability since the onset of the program. Now, we are beginning to see lawsuits are being filed to remedy perceived issues with aspects of the PPP. The interim final rules provided little guidance on critical aspects of the program, such as the documentation required to determine eligibility, the process for submission and approval of the loans by the SBA, the collection of servicing fees, and the determination of funds to be forgiven. This lack of guidance shifts too much liability to the lender and creates too much process risk relative to the limited interest rate. Thus, we call on Congress to enact commonsense liability protections for PPP lenders.

Member Business Lending

Looking forward beyond PPP, small businesses across the country will continue to be in need of funds and credit unions are in a position to pump billions of capital into the economy - at no cost to the government. There's only one obstacle: an arbitrary credit union Member Business Lending (MBL) cap which currently limits some credit union lending activity to 12.25% of assets.

Given the urgent financial needs of so many small businesses because of the COVID-19 crisis, now is the time to provide credit unions with additional flexibility to serve their business members by lifting the cap.

Even temporarily lifting the cap will result in more credit union business lending. While credit union business lending has increased greatly since the Great Recession, many credit unions are now approaching the 12.25% of assets cap. We conservatively estimate that temporarily removing the MBL cap will provide over $5 billion in capital to small and informal business ventures, creating nearly 50,000 over the course of the next year.[1]

Additional credit union lending will not impede bank lending activity. SBA research shows that growth in credit unions' small business lending is apparent in many respects but a majority of credit union business lending is for loans that banks won't originate – which means a majority of credit union lending does not replace lending that would otherwise be done by banks – it is lending that otherwise would not occur.[2] SBA research specifically shows that roughly 80% of credit union business loans are loans that banks would not make.

Small businesses and communities around the country are suffering and need access to relief quickly. Thus, we encourage the Committee to include H.R.6789, the Access to Credit for Small Businesses Impacted by the COVID-19 Crisis Act of 2020 in the next phase of COVID-19 legislation. The bill would lift the credit union MBL cap during the pandemic and one-year after the pandemic ends for loans specific to COVID-19.

Central Liquidity Facility (CLF)

The CARES Act included a much-needed expansion of the National Credit Union Administration's Central Liquidity Facility (CLF), allowing corporate credit unions to act as agents for natural person credit unions and expanding the CLF's borrowing authority from 12 times the paid in capital to 16 times. These changes make the CLF more accessible to credit unions and expand the amount of liquidity NCUA could provide credit unions. The exemption is set to expire at the end of 2020.

Given the unprecedented nature and the depth of this pandemic and the subsequent economic crisis, we urge Congress to expand the CLF's borrowing authority to 25 times the paid in capital, extend the expanded borrowing authority until December 31, 2021, and to make permanent the ability of corporate credit unions to act as agents for credit unions.

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[1] CUNA Estimate Assumptions: 1. Grandfathered CUs, Non-Federally Insured and/or Low-Income designated do not increase lending; 2. Non-Commercial lenders lend in amount equal to 1% of assets on average under the new authority; 3. All other Commercial CUs lend in amount equal to 60% of their current use rate; 4. Estimates produced using assumptions 1-3 are further adjusted as follows: * CUs with net worth/assets <=6% are assumed to have no Commercial Loan growth. * CUs with net worth/assets between 6% and 7% remain at the current 12.25% cap. * CUs with Comm Lns/assets >= 10% are limited to a 30% increase in Commercial Loans in the 1st year. 5. First year increases: baseline estimate = 50% of new use rate; adjusted/conservative estimate = 40% of new use rate. Employment increase is based on Council of Economic Advisors 5/09 ARRA job creation estimates ($92,000 in spending creates 1 job / $109,633 in 2019 dollars).

[2] Wilcox, James A. The Increasing Importance of Credit Unions in Small Business Lending. Small Business Administration Office of Advocacy. 2011. Contract SBAHQ-10-R-0009.

The consequence of not having these provisions in place prior to this crisis is that NCUA has had to engage in a membership campaign for the CLF, asking credit unions to contribute capital to the facility at the very time credit unions are most reluctant to give up capital. Congress should take steps to ensure the long-term viability of the CLF, so that it can be prepared to help credit unions in future crises.

Troubled Debt Restructuring (TDR)
Under the CARES Act, Section 4013 states that if a loan was current either on December 31, 2019 or at the time of modification, COVID-related modifications to the loan are exempt from Troubled Debt Restructuring (TDR) treatment. The exemption is set to expire at the end of 2020.

Another provision of the CARES Act, Section 4022, states that federally backed mortgages (Fannie, Freddie, VA, or FHA) may request loan forbearance for up to 12 months during the national emergency.

The issue we face is that the TDR exemption lasts only until the end of 2020, but most forbearances will not end until 2021, at which time financial institutions will need to modify these loans. As a result of the unintentional misalignment of these two provisions of the CARES Act will result in variations in accounting treatment and operational complexities that make it more difficult for consumers to obtain loan modifications.

Credit unions want to help as many Americans as possible. Under the CARES Act, credit unions are required treat members with Federally backed loans in a certain way, and they have been doing that have been doing hat. But it’s critically important to extend that same accommodation to other borrowers who need it. We need consistency in how consumers are treated.

That said, we urge Congress to extend the CARES Act’s temporary TDR relief for an additional year, until the end of 2021.

On behalf of America’s credit unions and their 120 million members, thank you for holding this important hearing.

Sincerely,

Jim Nussle
President & CEO